




3 1761 11709382 3



The War Claims Commission

World War II

1970



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761117093823>

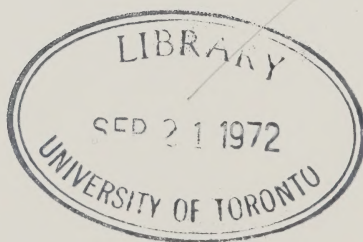
Canada, War Claims Commission

[General Publications]

[G-1]

**THE WAR CLAIMS COMMISSION
WORLD WAR II**





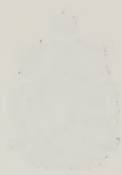


CANADA

THE WAR CLAIMS COMMISSION WORLD WAR II

A consolidation of the Reports of the Commission with related documents and including cases to illustrate the principles and procedures of adjudication

1970



1970

THE WAR CRIMES COMMISSION REPORT

This report was prepared by the Commission on the War Crimes of the Japanese in Canada, and is published by the Queen's Printer for Canada.

©
QUEEN'S PRINTER FOR CANADA
OTTAWA, 1970

Cat. No.: F52-168

Introduction

"Upon the completion of inquiries into individual claims by the Commission, I have been requested to prepare for publication a General Report supplemented by citation of individual cases. It would obviously be neither possible nor valuable to publish all the estimated 25,000 reports made by Deputy Commissioners and the Chief Commissioner. I have therefore selected and edited for publication a number of those reports in individual cases which illustrate the principles and procedure followed by the Commission in processing and adjudicating the various classes of claims."

THANE A. CAMPBELL

Chief War Claims Commissioner

(Extracted from the 1966
Supplementary General Report)

Contents

	PAGE
1960 GENERAL REPORT	1
TOPICS	
(A) Terms of Reference	1
(B) Code of "Adjudication"	1
(C) Tribunals and Organization	3
(D) Practice and Procedure	4
(E) Claims "By Canadians"	5
(F) Classes of Claims	6
(G) "Satisfaction Otherwise Provided For"	11
(H) Number and Disposition of Claims	15
(I) Priority of Payments	19
(J) The War Claims Fund	20
(K) General Recommendations	21
APPENDICES	
(A) War Claims Regulations, 1954 Consolidation	27
(B) " " " 7 July 1955 Amendments	31
(C) " " " 19 April 1956 Amendments	32
(D) " " " 23 October 1958 Amendments .	33
(E) War Claims (Italy) Settlement Regulations, 1954 Consolidation	35
(F) War Claims (Italy) Settlement Regulations, 30 June 1955 Amendments	38
(G) Rules of Procedure	39
(H) Analysis of Amounts paid on Claims (1960)	55
1966 SUPPLEMENTARY GENERAL REPORT	59
APPENDICES	
Supp. A Report of Advisory Commissioner	71
Supp. E March 1960 Report on Italian Treaty Claims	193
Supp. F December 1960 Report on Italian Treaty Claims	195
Supp. G 1966 Report on Italian Treaty Claims	197

	PAGE
Supp. H 1966 Financial Analysis of Claims	199
Supp. J 1960 Memo re Hungarian Peace Treaty Payments	200
Supp. K General Report on Prisoners of War in Europe under P.C. 1953-857	201
Supp. L Dominion Law Reports Headnote in Laane and Baltser v. Estonian State Cargo & Passenger Steamship Line	217
Supp. M Exchequer Court Reports Headnote in Whitehead et al v. The Minister of National Revenue	218
INDEX	221
Supp. N Edited Reports of Cases before Commission	229
ALPHABETICAL LIST OF CASES	725

1960 GENERAL REPORT OF CHIEF WAR CLAIMS COMMISSIONER

(A) Terms of Reference

By Commission issued on behalf of Her Majesty by His Excellency the Governor General of Canada, under the Great Seal of Canada and bearing date the twenty-third day of October A.D. 1952, I was appointed Chief War Claims Commissioner, and was directed

“to inquire into all particular claims made by Canadians arising out of World War II that might be referred to me and for which compensation might be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims, and to report to the Secretary of State stating whether in my opinion the claimant or other person was eligible, under the rules referred to in section three of the War Claims Regulations established by Order in Council P.C. 4267, of the ninth day of October, 1952, to receive a payment out of the War Claims Fund, together with the reasons for my opinion and my recommendation as to the amount that in my opinion should be paid in respect of each such claim.”

By the same Commission I was directed, as Advisory Commissioner on Claims under the Treaty of Peace with Italy, to inquire into and make reports and recommendations to the Minister of Finance concerning the matters specified in the War Claims (Italy) Settlement Regulations, pursuant to the provisions thereof.

The Commission was issued pursuant to Part I of The Inquiries Act, Chapter 99 of the Revised Statutes of Canada, 1927, and under the immediate authority of Order in Council P.C. 4354 of the same date as the Commission. The War Claims Regulations (*supra*, sec. 2(b)) had already made provision for the appointment of a commissioner for the purpose of inquiring into, reporting upon and making recommendations with respect to the payment of War Claims in particular cases.

I am now able to report that, with the cooperation of the additional Commissioners, or “Deputy Commissioners”, appointed under paragraph 4 of P.C. 4354, *supra*, I have inquired into, and reported upon, all particular claims presented or referred to me either as claims for payment out of the War Claims Fund or as claims under the Treaty of Peace with Italy.

(B) Code of “Adjudication”

The War Claims Rules, or rules governing payment out of the War Claims Fund of compensation in respect of war claims, were established by section 3 of the War Claims Regulations, P.C. 4267 of October 9, 1952. The Rules, as so established, were constituted of the recommendations contained in the Report

of the Advisory Commission on War Claims (the Right Honourable James Lorimer Ilesley) with the modifications specified in the Schedule to the War Claims Regulations and in subsequent amendments to the Schedule.

The Report of the Advisory Commission was submitted to His Excellency the Governor General in Council on 25th February, 1952, and was published (with relative documents) in booklet form by the Queen's Printer in that year. It was reprinted, with additional documents, in 1954.

In the course of his recommendations the learned Advisory Commissioner had suggested (page 91) that before the setting up of a tribunal or tribunals there should be established a code defining the war claims that are admissible and settling the basis upon which the compensation should be determined. It is a tribute to the thoroughness and excellence of his investigation and Report that its recommendations, with few and relatively minor modifications, themselves constituted the War Claims Rules, or code of adjudication which he had suggested, and served that purpose admirably throughout the functioning of the War Claims Commission. In fact, I am doubtful if any attempt to establish a more detailed *a priori* code would have been as workable, or could have resulted in as equitable a distribution of the War Claims Fund.

Another avenue for amendment of the code of adjudication was suggested by the learned Advisory Commissioner at page 94 of his Report, namely: "that the Chief Commissioner should be empowered and should feel free to recommend amendments to the code from time to time in the light of the experience gained by himself and the Deputy Commissioners, if the making of the amendments will do no injustice to and work no discrimination against the claimants whose claims shall have then been disposed of."

Pursuant to that suggestion, I had occasion to recommend five specific amendments to the War Claims Rules. Of those, the Government approved two and incorporated them in the Schedule to the War Claims Regulations. One had to do with advancing to "the date of the loss" the commencement of interest on awards for property losses occurring on land not included in enemy or enemy occupied territory. The other recommendation was for a 30% increase in the scale of awards for maltreatment of prisoners of war and civilian internees; as a matter of fact the Government passed an amendment providing for a 50% increase.

Two of my recommendations for amendments were rejected by the Cabinet under two successive Administrations. One would have provided the survival of a maltreatment award for the benefit of parents without proof of dependency in case a deceased prisoner or internee left no wife or child. The other would have provided payment of maltreatment awards to "dependents" in respect of the murder of prisoners of war by their enemy captors. With deference to the two Administrations which rejected those two amendments, I am still of the opinion that they should have been allowed.

My fifth recommendation was for a basic presumption of pecuniary loss in cases of death claims. This recommendation was rejected by the Cabinet as a specific amendment to the Rules, but the Treasury Board approved its substantial implementation by the Commission through revised findings of fact and interpretation of the existing Rules in appropriate cases.

Apart from my specific recommendations to which I have referred, a number of amendments were reached through consultation of the Chief War Claims Commissioner with various Departments of the Government and with the Interdepartmental Committee on War Claims.

Basically, however, and with relatively few amendments, the "Ilsley Report" continued to be the code upon which the eligibility of claimants and the admissibility of claims was to be determined.

As the Report of the Advisory Commission on War Claims is available in booklet form (*vide* SA), my references to it will be as concise as possible. My Commission, and Order in Council P.C. 4354 of October 23, 1952, on which it is based, are copied at the back of the 1954 reprint of the Advisory Commission's Report. The War Claims Regulations, as consolidated by P.C. 1954-1809 of 23rd November, 1954, together with subsequent amendments are copied as Appendices "A", "B", "C", and "D" to my present Report. This Report should be read in conjunction with, and as a sequel to, the Report of the Advisory Commission.

(C) Tribunals and Organization

Pursuant to the recommendation of the Advisory Commissioner at page 91 of his Report, and to paragraph (4) of P.C. 4354 (*supra*), six additional or deputy Commissioners were appointed to act as tribunals of first instance in the hearing of claims. The functions of the Chief Commissioner were: (a) to direct the processing of claims and the operations of the Commission in general; (b) to make preliminary rulings on *prima facie* materials as to eligibility of claimants and admissibility of claims; (c) to decide which claims disclosed sufficient merit to be referred to Deputy Commissioners in individual cases; and (d) to make a final recommendation to the Government in each case (whether heard by a Deputy Commissioner or not).

On two occasions I took advantage of the Advisory Commissioner's suggestion on page 92 of his Report by convening series of meetings of the Deputy Commissioners for the consideration of problems arising generally. The first series dealt with maltreatment of prisoners of war in Europe. The second dealt with the effect of Nazi confiscation or forced sale on a claimant's ownership of property at the time of subsequent loss by operations of war.

I had also the constant advantage of less formal consultations with individual Deputy Commissioners and with groups, especially with those Deputy Commissioners who resided in the vicinity of Ottawa. Great benefit was derived from such discussions, particularly in the direction of uniformity of decision.

Much credit is due to the energy and cooperation, very largely on a voluntary basis, of the following panel of exceptionally competent Deputy Commissioners:

Hon. Mr. Justice James D. Hyndman, formerly of the Court of Appeal of Alberta;

Hon. Mr. Justice Henry I. Bird, of the Court of Appeal of British Columbia;

Hon. Mr. Justice Fernand Choquette, of the Court of Queens Bench, Quebec;

His Honour, C. St. Clair Trainor, Judge of the County Court, Charlottetown;

His Honour, Camille W. A. Marion, Judge of the County Court, Ottawa;

James Francis, Q.C., of Ottawa. Mr. Francis had had wide experience in the Department of Justice and the Privy Council Office, and had acted as Chief Legal Adviser to the Commission in its initial stages.

In addition to the Deputy Commissioners, I was fortunate in securing the services of a highly efficient staff under the direction of Mr. Paul Theriault as executive secretary. The number of the staff at Commission Headquarters in Ottawa varied from about twenty-eight at the peak of operations to two as the work drew to a close. It included three legal advisers, one Italian expert, secretaries, administrative officers, clerks, stenographers, and typists. The volume and quality of the work turned out was a tribute to the competence of the staff.

Besides the regularly employed staff, the Commission engaged the *ad hoc* services of registrars and secretaries at Montreal, Toronto, Vancouver, and Charlottetown, and of court reporters both at Ottawa and at a number of regional points. Only on one occasion (in England) was it necessary to engage a "special examiner" outside the regular personnel of the Commission and staff.

By paragraph (6) of P.C. 4354 (*supra*), as well as by the terms of my commission, it was required that all departments and agencies of the Government of Canada furnish such assistance or information as might be required by the Commission. The Commission has received invaluable cooperation and assistance from the Under Secretaries, Deputy Ministers, and personnel of all Government departments and agencies with which it has come into contact; I may mention particularly the Departments of the Secretary of State, Justice, Finance, External Affairs, National Defence, Veterans' Affairs, Citizenship and Immigration, and Public Works.

Much credit is also due to my colleagues of the Supreme Court of Prince Edward Island, Mr. Justice Mark R. MacGuigan and Mr. Justice George J. Tweedy, who willingly assumed the additional work necessitated by my prolonged absences from the judiciary of the Province.

(D) Practice and Procedure

As recommended by the learned Advisory Commissioner, the War Claims Commission avoided formalities and technicalities as far as possible in all its proceedings. In the interests of uniformity, however, I drew up a set of "Rules of Procedure" (herein referred to as R.P. or R.R.P.), to serve as a guide in the processing and adjudication of claims. Those "Rules" were at various times supplemented in the light of experience and, in consolidated form, appear as Appendix "G" to this Report.

I also drafted a large number of "form letters", which greatly simplified the immense volume of correspondence with individual claimants. A series of forms appropriate for the preparation of "Statements of Claim" and accompanying particulars was drafted by Mr. James Francis, Q.C., then Chief Legal Adviser to the Commission; these forms proved to be admirably suitable for their purpose.

Briefly summarized, the procedure followed in the determination of an individual claim may be related in the following four steps:

(1) *Processing*. The staff of the Commission would secure from the claimant a "Statement of Claim" under oath or statutory declaration, (R.P. 2), together with such supporting documents and written evidence as the claimant could furnish for his file. The staff would then proceed to obtain such additional materials, whether corroborative or otherwise, as might be available from Government records or other public sources, (R.P. 4).

(2) *Preliminary consideration by Chief Commissioner.*

- (a) If the claimant's eligibility as a Canadian at all relevant times was clearly established and the claim disclosed *prima facie* merit, the Chief Commissioner would refer the case to a Deputy Commissioner for hearing, (RR.P. 8-10). Claims for maltreatment of former prisoners of war in Europe were decided by the Deputy Commissioners on the basis of documentary materials on file. Claimants in other cases were given the option of one of three modes of disposition, (R.P. 6):

- (i) on documentary materials;
- (ii) on oral hearing at Ottawa;
- (iii) on oral hearing at a convenient regional centre.

It was occasionally necessary, especially when common law domicile was involved, to refer national status to a Deputy Commissioner as a preliminary question, (Report of Advisory Commissioner, p. 24).

- (b) If the claimant failed to establish that he had Canadian status at the relevant times, or if the materials on file clearly indicated that no valid claim could be established, the Chief Commissioner would reject the claim without a formal hearing, (R.P. 5). Approximately 2355 claims were disposed of in that manner.

(3) *Hearing before the Deputy Commissioner:* either on documentary materials, or orally at Ottawa or at a regional point, (RR.P. 8-15). The Deputy Commissioner would then submit his findings and recommendation to the Chief Commissioner (with his reasons), (R.P. 16).

(4) *Review by Chief Commissioner.* Unless the Deputy Commissioner allowed substantially the full amount claimed, the claimant was furnished with a copy of the Deputy Commissioner's report, and was entitled to submit a written argument on review, (R.P. 17). This procedure was followed in every case in which the Chief commissioner anticipated the necessity of revising the Deputy Commissioner's recommendation to the detriment of the claimant, (R.P. 20).

In a few cases involving unusual difficulty or other exceptional circumstances, a rehearing or oral argument was permitted on review, (R.P. 22).

The Chief Commissioner would then prepare his final recommendation and forward it to the Secretary of State, normally furnishing the claimant with a copy at the same time, (R.P. 26). Approval of the recommendation, and determination of the times of payments (if any), would then become matters for consideration by the Treasury Board, (War Claims Regulations, sec. 4).

(E) Claims "By Canadians"

The question of the national status of a claimant (or of the person through whom he claims) at the time of loss by operations of war was often a complicated and difficult one to resolve. (Report of Advisory Commission, p. 24 *et seq.*; RR.P. 48-52). The case of a former British subject was normally more difficult than that of a former alien, as the former alien usually acquired Canadian status by the precisely recorded step of naturalization.

Frequent complaints were received from those who had lost their eligibility to claim by forfeiting their Canadian status before the date officially fixed as the time of presentation of their claims. The necessity for such a rule is obvious, and the advance publication of the date to be fixed would have enabled claimants to defeat the intention of the rule by deferring their acquisition of alien status. I see no reason why claimants who forfeit their Canadian status should retain their eligibility to be compensated out of the Canadian War Claims Fund, and I think the Government acted wisely in resisting demands for the amendment of this requirement.

At the other end of the ruler, it has frequently seemed incongruous to the Commissioners that former aliens, who became naturalized in Canada a few months, or even weeks or days, before suffering loss by operations of war, should share *pari passu* with Canadian-born citizens. It should be remembered, however, that before acquiring Canadian status by naturalization such former aliens must have been landed in Canada with the declared intention of permanent residence five, or at least four, years previously.

It is regrettable that a number of British subjects who settled in Canada lost their eligibility to claim in the United Kingdom because of change of residence, but did not become eligible to claim here as they were not Canadians at the time of loss. In the event of a future war, this problem might well be a topic for negotiation among the Commonwealth countries.

On the whole, I think the rules regarding national status of individuals worked with substantial equity. Those rules would be greatly simplified on any future occasion by the existence, since 1st January 1947, of the *Canadian Citizenship Act*.

As to corporations, the Report of the Advisory Commission proposed three tests of national status, viz: residence, trading in Canada, and a minimum percentage ownership of capital by Canadians. Section 1(b) of the Schedule to the War Claims Regulations deleted the third test. Though this change affected only a very few claims, it created considerable difficulty and, with deference, I consider that the three proposed tests should have been retained.

(F) Classes of Claims

The War Claims Commission has maintained the Advisory Commissioner's classification of claims as claims for: (1) maltreatment, (2) death, (3) personal injury, or (4) property loss.

(1) *Maltreatment claims* have been again subclassified as arising:

(a) in Japanese-operated camps:

(i) prisoners of war;

(ii) civilians;

(b) elsewhere (usually in Europe):

(i) prisoners of war;

(ii) civilians.

The evidence available to the learned Advisory Commissioner led him to the conclusion that the treatment accorded by the Japanese to their military

and civilian internees was so barbarous and inhuman as to warrant a universal *per diem* award without the necessity of establishing specific maltreatment in individual cases.

The resulting rule worked particularly well in the case of former prisoners of war of the Japanese. The claims of those still living were dealt with by the Treasury Board under section 4(2) of the War Claims Regulations, on the basis of the nominal roll of the units concerned, and without reference to the Commission. Claims for maltreatment of deceased former prisoners were referred to the Commission for findings as to relationship and "dependency" of surviving claimants.

The application of the rule was much more difficult in claims for maltreatment of civilians in the Far East, for two reasons. First, mature investigation revealed that Japanese treatment of civilian internees, though brutal and inhuman in many regions, was far from being so universally severe as the initial evidence indicated. Secondly, extreme difficulty was encountered in drawing a clear line of distinction between internment "in Japanese-operated camps" (Report of Advisory Commission, p. 50) and "enforced residence under enemy supervision" (Report, p. 41); the former giving rise to compensation on an automatic *per diem* basis, the latter only on proof of specific acts of maltreatment.

Such problems became apparent too late for the Chief Commissioner to recommend an amendment which would do equity as between those whose claims were already settled and those whose cases were still before the Commission. It was therefore necessary to proceed by way of interpretation of the existing rules. As a result, claims for alleged maltreatment of civilians by the Japanese in certain regions, and for personal injury and death alleged to have been caused by such maltreatment, became the most contentious (and among the most difficult) cases to come before the Commission. In my opinion compensation was not refused in any meritorious cases, whereas the application of the automatic *per diem* award was responsible in very numerous cases for the granting of compensation which would not otherwise have been available.

As to military and civilian internees in Europe, the Rules applied the automatic *per diem* award for maltreatment only to those who were detained in the direct custody of the SS or other body indicted as a criminal organization by the International Military Tribunal at Nuremberg. The Report of the learned Advisory Commissioner recommended that claims for maltreatment in other internment camps in Europe be dealt with on the basis of individual proof and lump sum awards.

There was at the outset much conflict of evidence and opinion as to the treatment generally accorded by the Germans and Italians to their prisoners of war and other internees. As this controversy became acute, the Government passed an Order in Council (P.C. 1953-857) whereby I was directed to "inquire into and report upon conditions in civilian internment and military prison camps in Europe in which Canadians were interned or imprisoned during World War II, with a view to ascertaining whether maltreatment prevailed, sufficiently serious, general and prolonged to justify the payment of an automatic award to Canadians held in such camps, or any of them, for the duration of their internment or imprisonment of any part of it."

After a careful and detailed inquiry on the basis of evidence then available, I submitted my formal report on P.C. 857 to the Cabinet in English and

French about October 1953. It is therefore not necessary for this Report to contain in any detail the steps and reasoning which led up to my general conclusions at that time. (*vide* SK).

My findings were to the effect that in military prison camps in Europe in which Canadians were imprisoned during World War II there prevailed maltreatment, sufficiently serious, general and prolonged, though sporadic, intermittent, and widely varying in degree, to justify the payment (in all cases where the presumption of maltreatment was not rebutted) of a general basic *per diem* award to Canadian military personnel held in such camps, for the duration of their imprisonment. I also found that certain aspects of treatment by the Germans of groups of prisoners of war in their custody formed aggravating incidents in the maltreatment of prisoners subjected to such incidents, and were sufficiently serious and general in such groups of cases to justify the recommendation of an additional semi-automatic award upon proof of subjection to any such aggravating incident.

As claims for general and additional awards were normally intermingled, it appeared that the most satisfactory method of dealing with all claims by ex-prisoners of war in Europe, or by their surviving dependents, would be for the Commission, acting upon general evidence and information before it, to import into each individual case the following presumptions of fact:

(1) (rebuttable) that each Canadian prisoner of war in Europe suffered a degree of serious maltreatment, albeit sporadic and intermittent;

(2) that each Canadian POW in Europe suffered some degree of incapacity to work as a result of his maltreatment;

(3) that such incapacity to work subsisted in each case for some period or time after liberation.

The Commission would then proceed to assess the lump sum appropriate to the presumed or established maltreatment in each case on the basis of the following formulae:

(a) for the total period of imprisonment, a general award of 20 cents per day;

(b) in addition, for the following aggravating incidents, if established,

(i) for the first four months of enforced "shackling" \$60,

(ii) for forced participation in a "hunger-march" of early 1945, 80 cents per day of the duration of the march, with an additional \$50 for the preceding period of unusual and unjustifiable malnutrition, which served to debilitate the strength of the prisoners and to aggravate further the effects of the marching conditions,

(iii) for any period of direct custody by the Gestapo or other criminal organization of the Germans, 80 cents per day,

(iv) for forced participation in a "Dieppe march" of 1942 (or in a similar march following capture at another point, if reasonable *prima facie* proof of maltreatment were tendered) \$20,

(v) for maltreatment during transportation in box cars, per voyage, \$20, and

(c) a special individual award for any unusually serious maltreatment established by an individual claimant—in such sum as the proper

tribunal might consider just and equitable to recommend—in view of the objective severity of the treatment or its subjective effects upon the individual maltreated.

It will be seen that my Report under P.C. 857, while recognizing the system of lump sum awards recommended by the Advisory Commissioner, proposed the adoption of certain established formulae as guides to assist in an equitable computation of appropriate lump sums. On the basis of that Report the Commission proceeded to adjudicate the very numerous claims advanced for maltreatment of prisoners of war in Europe.

The application of the proposed formulae, and of the summary procedure set forth in R.P. 45, resulted in the saving, both for claimants and for the Commission, of the very substantial expense and delays which would otherwise necessarily have been involved in the personal prosecution of oral hearings on a regional basis.

In addition to the formulae prevailing under headings (a) and (b) special individual awards were recommended under heading (c) for such unusual maltreatment as beatings, forced labour under improper working conditions (especially in salt mines and coal mines), and unduly severe treatment in the course of interrogation or solitary confinement.

The general presumptions of maltreatment which I have set out above were held to have been rebutted in two classes of cases, namely those in which the claimants were hospitalized for substantially the whole period of their detention, and those in which the period of detention was so short as to negative the presumption of serious maltreatment. In both those classes, awards were recommended only if individual incidents of maltreatment were established.

The normal range of resulting lump sum awards for maltreatment of prisoners-of-war in Europe was from \$200 to \$450. A few cases of short-term imprisonment brought smaller awards, while a very few exceptional cases brought awards as high as \$500 or \$600. Each maltreatment award became subject to a 50% supplement by virtue of Section 2(e) of the Schedule to the War Claims Regulations, enacted 23rd October 1958 (P.C. 1467).

The average award per day of imprisonment in Europe was roughly 40 cents, or 60 cents with the addition of the 1958 supplement. The result seems to have been a reasonably satisfactory, though modest, personal solatium to individual claimants, whilst maintaining a fair ratio to the amount of funds available and avoiding a serious discrimination in favour of prisoners of war as against those who continued to undergo the more trying and more dangerous experiences of front line service.

By my Report under P.C. 857, all presumptions and formulae applicable to prisoners of war were imported into claims for maltreatment of Canadian merchant seamen.

I made, however, no general finding as to maltreatment of civilian internees in Europe, and claims of this class were therefore adjudicated on the basis of individual proof adduced in each case.

(2) and (3) *Claims for death and personal injury* were adjudicated on principles analogous to those prevailing in civil cases in the Courts. Awards were recommended in each case where pecuniary loss resulted from death or personal injury caused either by an operation of war or by maltreatment. Both in the case of death claims and personal injury claims the War Claims Rules

strictly limited the compensation to pecuniary loss, and precluded the granting of any compensation for pain and suffering, whether physical or mental, or for the wounded feelings of the dependents of a deceased person by reason of his death. (Report of Advisory Commission, p. 34, p. 36).

One of the most serious criticisms encountered by this Commission was that compensation awarded for the more personal classes of claims such as death, personal injury, and maltreatment, bore too small a ratio to compensation allowed for the purely material claims for property losses. The learned Advisory Commissioner recognized a moral priority of the personal classes of claims (Report, pp. 84-85), but considered that it could be given effect by the proposed order of priority for payment. The event has shown that the order of priority has been largely effective as to time of payment only. In my opinion a more equitable distribution of any future fund might be made by allowing (in addition to pecuniary loss) a modest solatium to persons injured, or to the dependents of persons killed, by operations of war. The moral priority of maltreatment claims in themselves has, I think been adequately recognized by the 1958 supplementary payments (*supra*, p. 4).

(4) *Claims for property losses.* This class of claims displayed an endless variety as to country or place of loss, cause of loss, and nature and extent of loss or damage. The very great majority of valid claims related to loss of, or damage to, tangible assets. But the relatively few admissible claims for loss of bank deposits and securities presented exceptional problems in view of the difficulty of establishing the exact date and cause of loss of such assets in enemy or enemy-occupied countries. The time of loss was a particularly acute problem, and particularly essential to determine (both respecting securities and tangible assets) in cases where the claimants had acquired Canadian status at a comparatively late date in World War II, because such claimants were eligible only if they could establish that the acts causing their respective losses had occurred after they had become Canadians.

Authentic evidence as to the ownership of immovable property was available from most countries, including Italy, Western Germany, and Austria. Such evidence was practically impossible to secure from countries behind the "Iron Curtain", but many claimants were fortunate enough to possess documents from which ownership at the relevant times could be reasonably inferred.

The date, cause, and extent of loss of movable property were frequently difficult to determine with accuracy, especially where it occurred in enemy or enemy-occupied territory. In cases involving consignments of merchandise, loss of documents frequently made it difficult to establish whether, at the relevant times, the property belonged to the Canadian claimants or to non-Canadian consignors or consignees.

But the most difficult question involved in the decision of property claims was the effect of Nazi confiscation or forced sale on the ownership of the property concerned. Such a confiscation or forced sale usually took place either before World War II, or during the war but before the claimant or owner had acquired Canadian status. Obviously, in neither case could the confiscation itself form the basis of a compensable loss. But the problem arose whether such confiscation or forced sale was effective to divest the owner of his title to the property so as to preclude his claiming compensation if the property was later destroyed or damaged by an operation of war *after* he had become a Canadian national.

Owing to the difficulty and complexity of this problem, I followed the suggestion of the learned Advisory Commissioner (Report, p. 92) by convening a series of meetings of the Deputy Commissioners. As a result of their discussions, a formula was reached which served as a guide for decision in the group of cases to which I have just referred. The formula may be summarized as follows:

(1) The ownership of tangible property at the time of the act occasioning its loss should be determined in accordance with the law of the country of situs at that time;

(2) Prior confiscation (or forced sale) by a government recognized by Canada as being the *de facto* government of that country was effective to divest the title of the owner—(On the basis of this interpretation, a Nazi confiscation or forced sale in, e.g., Germany proper and Austria, whose *anschluss* with Germany had been recognized by Canada, would be effective to divest the title of the former owner; whereas in, e.g., Poland and Czechoslovakia, where Canada did not recognize the Nazis as the *de facto* government, such a confiscation or forced sale would be a legal nullity); and

(3) The Commission could not recognize post-war measures of restoration as being retroactively effective to revest the ownership as at the time of the act causing the loss or damage complained of.

The foregoing formula was not free from objections and difficulties, but very careful consideration and reconsideration convinced the Commission that it was the best available solution to the problems involved.

(G) "Satisfaction Otherwise Provided For"

The extent and operation of this salutary principle is clearly outlined by the learned Advisory Commissioner at pages 16 and 17 of his Report.

The practical application of the principle was complicated: (a) by the fact that a great many claimants had not applied for compensation available to them from sources other than the War Claims Fund; (b) by the fact that at the time of the making of my recommendations the amount, if any, of alternative compensation available could not be determined with accuracy; and (c) by the fact that in numerous cases both those complicating elements were present.

In order to prevent undue delays by reason of the second factor (b), the Government enacted Section 4(4) of the War Claims Regulations and Section 8 of the Schedule thereto (P.C. 1030 of July 1955—see Appendix "B"), which had the combined effect of enabling the Chief Commissioner to make his recommendation in any case immediately on the basis of the information then available, and of enabling the Treasury Board to determine the portions and times of payment in the light of information from time to time available as to potential alternative compensation. A number of awards or portions of awards are still held up pending progress in settlement of claims against alternative sources in West Germany.

The excuse given by practically every claimant who (a) failed to prosecute a claim against an alternative potential source was that he had not been advised or informed of its availability. After very careful consideration the Commission adopted as a minimum standard of prudence that a claimant

should at least have made some inquiry at an official level as to the availability of compensation in the country of the loss. If he omitted to take a single step or to make a single inquiry, he must be considered to have failed to receive an available payment by reason of his own neglect or default, and must therefore be deemed to have received the payment, if any, for which he would have been eligible on reasonable prosecution of a claim. Such presumed payment must therefore be deducted from any award recommended to be paid from the War Claims Fund. Obviously, the assessment of the amount to be so deducted in any of the numerous cases where no alternative award was actually received was a matter of very considerable difficulty.

The deduction of "Satisfaction Otherwise Provided For" was, as a fact, applicable only to claims for property loss, and its application varied greatly according to the country in which any loss had occurred. This variation can best be illustrated by references to the "*Instances*" outlined by the Advisory Commissioner and by using the same reference numbers as he uses at pages 10-16 of his Report. In the interests of brevity I shall group several of the reference numbers, and thus depart from their original sequence.

Instances 4, 5, 8, 10, 13, 18.—I have no recollection of any valid claims presented to the Commission for property losses in Finland, North Borneo, Sarawak, or Brunei. There was no case of duplication as between shareholders and corporations, whose possibility was anticipated in *Instance 18*. There were, I think, one case for property loss in Thailand, one for property loss in the Netherlands, and two in which the United Kingdom scheme for war damage compensation was applicable; but in those cases the principle of deduction presented no unusual difficulty.

Instance 15.—The only cases in which "compensation by the Canadian Government for death of civilians killed while on Government business" came to the attention of the Commission were under the headings of "pension, gratuity, or other compensation for groups" as set forth at page 31 of the Advisory Commission Report. The War Claims Rules precluded the payment of compensation out of the Fund for the death of members of groups for which such benefits had been provided even if the benefits so received were less than the compensation which would otherwise have been payable out of the War Claims Fund.

Instances 16, 17.—In any case where the Government of Canada paid interim compensation for war losses, the amount of the interim compensation was deducted from any award recommended by the Commission, and was refunded to the Government in full priority to any further payment to the claimant. If the recipient of interim compensation declined or neglected to prosecute a claim against the War Claims Fund, the Minister of Finance was subrogated to his entitlement and might prosecute a claim as fully and effectually as the potential claimant. (R.P. 39).

Instance 14.—As *ex gratia* payments by the United Kingdom Government for losses of belongings at the sinking of the *SS Athenia* had all been made by 1949, their deduction from the Commission's awards was a relatively simple matter. They were usually substantially smaller than the corresponding awards by the Commission for three reasons:

- (a) they were assessed summarily and without the opportunity of full proof;

- (b) certain classes of commodities were excluded from compensation; and
- (c) no interest was allowed.

Nevertheless, the United Kingdom awards served as a valuable check in the assessment (in the very numerous cases) of losses under the War Claims Rules, which claimants were required to establish after such a long lapse of time.

Instance 1.—As previously indicated, the terms of reference of my Commission obliged me to inquire into claims under the Treaty of Peace with Italy, as well as into claims for war losses in that country which came under the War Claims Rules. A first reading of the relevant provisions would suggest that two-thirds of each loss would be paid under the Treaty and the remaining third out of the War Claims Fund.

Experience soon showed, however, that such was not the case. Awards under the Italian treaty were based on replacement values existing on the day on which the 290 million lire was paid to Canada, namely 27th day of October, 1952—(War Claims (Italy) Settlement Regulations, sec. 3 (2)—Appendix “E”). Awards under the War Claims Rules, on the other hand, were based on loss of reasonable market value as of 30th June 1939 (Report of Advisory Commission, p. 79). Comparison of values of property and commodities on those respective dates invariably led to the result that the (2/3) 1952 award under the Italian treaty was slightly larger than the (100%) capital of the 1939 award (for the same loss) under the War Claims Rules. The amount payable out of the Fund in any individual case was therefore: the total loss on the June 1939 basis; plus simple interest at 3% from 1st January 1946 to the date of payment of the Italian Treaty award; minus the amount of the Italian Treaty award.

In all, 119 claims were considered by me, as Advisory Commissioner, under the War Claims (Italy) Settlement Regulations; 61 were rejected, and awards were recommended and paid in the remaining 58. The awards under the Treaty amounted to:

Property losses	Lire 86,369,239.10
Expenses allowed to claimants	2,059,958.00
	<hr/>

making a total of Lire 88,429,197.10, or the equivalent of \$136,916.25. This amount is exclusive of the claims of Aluminium Limited and Estate of Alexander Mackenzie, which were paid separately under special arrangement. (Regulations, s.2 (2) (b)).

In the case of a few of the rejected claims presentation had been made too late to comply with the requirement of the War Claims (Italy) Settlement Regulations (latest date for application 31st December 1951), but still in time for acceptance under the War Claims Rules. In such cases awards were recommended under the Rules, but subject to deduction of potentially available compensation under the Italian Treaty.

The War Claims (Italy) Settlement Regulations, as revised and reenacted by P.C. 1723 of 18th November 1954, and a further amendment of 30th June 1955 (P.C. 977) are copied as Appendices “E” and “F” respectively to this Report.

Instance 6.—Compensation in Japan, under the Allied Powers Property Compensation Law, was also based on post-war (c. 1956) replacement values but, as the learned Advisory Commissioner pointed out, it was at the rate of

100% of the valuations as opposed to the two-thirds provided under the Italian Treaty. In all cases (but one) in which awards had been made under the Japanese Law, the compensation so received appeared to the Commission to be greater than awards under the War Claims Rules (based on June 1941 valuations plus interest from 1st January 1946) would have been for the respective losses. The single exception involved a commodity whose price had reached a very low level at the time of the Japanese valuation.

The great difficulty encountered in applying the principle of "Satisfaction Otherwise Provided For" to claims for property loss in Japan was that a large number of claimants had failed to claim under the Japanese Law,—some, apparently, though being aware of its availability. In such cases the Commission was bound to refuse awards from the War Claims Fund on the ground that the claimants, by their neglect or default, had failed to take advantage of compensation available on a more generous scale. One partial exception allowed from the operation of the principle was in cases of claims for loss of personal belongings, where, owing to expenses and contingencies of proof in Japan, we allowed an exemption not exceeding \$200. in each case and recommended awards up to that amount, plus interest. Such exemption seemed equitable in the early cases, and was followed throughout.

Instances 11, 12.—Claims before the Philippine War Damage Commission and before the Malayan War Damage Claims Commission had, I think, been fully settled before the corresponding claims were decided by this Commission. The application of the principle was therefore merely a matter of subtraction, except where the claimants had failed to prosecute claims against the alternative sources. In such cases the deductions made by this Commission were moderate, owing to the relative uncertainty of the amounts which might have been received in the countries where the losses occurred.

Instances 2, 3.—Owing to the fact that the Governments of Hungary and Roumania continued to ignore the provisions of Articles 26 and 24 respectively of the treaties of peace with those countries, on 9th April 1953 (P.C. 554) the Governor in Council enacted section 7 of the Schedule to the War Claims Regulations. The effect of that section was to enable this Commission, in dealing with claims for losses in Hungary and Roumania under the War Claims Rules, to disregard the remote possibility of compensation under the treaties of peace with those countries.

Concurrently, on 30th November 1953, the Secretary of State, pursuant to a recommendation of the Minister of Finance, referred to me for enquiry and report claims under the Treaties of Peace with Hungary and Roumania which were also within the provisions of the War Claims Regulations.

In the result, claims for losses in Hungary and Roumania have been dealt with by this Commission only to the extent to which such losses were compensable out of the War Claims Fund. Hungarian and Roumanian claims should be kept open for prosecution under the respective treaties of peace if and when the relevant provisions become operative. The Crown in the right of Canada has been subrogated to the entitlement (under the Hungarian treaty) of those who have received awards from the War Claims Fund. In the interim the War Claims Fund has been reimbursed from funds of Hungarian origin in the hands of the Custodian, to the extent of two-thirds of the amount of the fifteen awards paid for losses of property in Hungary. This reimbursement was made under the provisions of Parliamentary Vote 657 of *Appropriation Act No. 3*, Cap. 54, of the Statutes of 1953. A similar reimbursement would have been available in respect of awards for losses in Roumania, but it happened that no valid claims for property losses in the latter country were established.

Instances 7, 9.—Considerable delay was experienced in the settlement of claims in France and Belgium. It was therefore necessary to invoke section 4(4) of the War Claims Regulations and section 8 of the Schedule, to enable the Treasury Board to make estimated interim payments from the War Claims Fund. The claims in France and Belgium have now all been settled, and it has therefore been possible to determine and pay in full the balances available from the War Claims Fund for property losses in those countries.

Instance 19.—West Germany. There is naturally no reference in the Advisory Commissioner's Report to the German Equilization of Burdens Law, which was not originally passed until 14th August 1952. With later amendments, that Law provided compensation for property losses in West Germany and West Berlin. Corporations were not eligible to claim.

As claims under the German Law have not yet been settled, and as it was impossible to estimate with accuracy the amounts which would ultimately be received on those claims, it was necessary for me to proceed (in the corresponding cases against the War Claims Fund) under Schedule 8 to the War Claims Regulations. The Treasury Board, acting under Section 4(4) of the Regulations has adopted the practice of paying 50% of the total award in each such case, that being an estimate of the minimal residual amount which will be payable after deduction of the compensation ultimately to be received from Germany.

Instance 20.—Insurance. Compensation from this source is partly analogous to, and partly distinguishable from, "Satisfaction Otherwise Provided For". Following the reasons set forth on pages 35 and 36 of the Advisory Commission's Report, but partly owing to the many and complex factors involved in the numerous types of life insurance policies and in the status and duration of individual policies, proceeds of life insurance policies have not been taken into account in computing the pecuniary loss arising from death.

On the other hand, proceeds of contracts of indemnity, such as marine, fire, and accident insurance, have been taken into account in assessing the amount of a loss. The proceeds of such a contract have been deducted before the fixing of the net award recommended from the War Claims Fund in each case, whereas "Satisfaction Otherwise Provided For" (in the strict sense) has been deducted from the award itself. The practical effect of this distinction is that "Satisfaction Otherwise Provided For" affects a claimant's priority rating, whereas the receipt of indemnity insurance does not. In other words, a claimant in whose favour an award of \$200,000.00 has been recommended for property loss, but who has received \$100,000.00 from marine insurance, would still be eligible to receive the balance of \$100,000.00 from the Fund under the present prevailing priority payments. But if he had received \$100,000.00 from another source of war damage compensation he would not receive any payment from the Fund until Order of Priority No. 7 is applied. (See under Topic (I)).

(H) Number and Disposition of Claims

From the point of view of numbers, the word "claim" has proved to be susceptible of a great variety of meanings:—

(1) The simplest method of computation is that of the number of proceedings listed as separate "cases". The number of "cases" and the methods of their disposition are indicated in the following summary. The expression "documentary hearing" is used to designate a hearing at the Commission's headquarters at Ottawa, presided over by a Deputy Commissioner assisted by Commission

counsel and staff, but not attended by the claimant or his representative; at such a hearing the evidence and arguments considered were the materials present on a fully documented and processed file.

Summary of Cases

Cases disposed of by preliminary rejection	
under War Claims Rules	2,309
under Italian Treaty	46
Cases disposed of by documentary hearing and review	
under War Claims Rules	7,478
under Italian Treaty	40
Cases disposed of by oral hearing at Ottawa and review	
under War Claims Rules	198
under Italian Treaty	19
Cases disposed of by oral hearing at regional points and review	
under War Claims Rules	1,110
under Italian Treaty	14
	<hr/>
Total cases disposed of by Commission	11,214
	<hr/>

Apart from the 2355 cases rejected on *prima facie* consideration, it is not useful to compute the number of cases disallowed upon adjudication owing to the fact that so many were allowed in part and disallowed in part. The proportion of allowed and disallowed claims will therefore better be indicated under sub-topic (2), which will deal with classified claims.

Summary of Reports

As each of the cases disposed of by hearing and review involved a report by a Deputy Commissioner and a report by the Chief Commissioner, the basic number of reports submitted by the Commission in the course of its operations would be:

Under War Claims Rules (2 x 8,786)	17,572
Under Italian Treaty (2 x 73)	146
The cases rejected on preliminary examination were disallowed in six "group" recommendations	6
There were also numerous interim and supplementary recommendations, of whose number we kept no separate account, but which I would estimate at	500
	<hr/>
Total reports filed by Commission (approx.)	18,224
	<hr/>

As a matter of strict logic, those eighteen-thousand-odd individual recommendations constitute the Report of this Commission. Obviously, however, they can neither be submitted as such in physical form nor be made an Appendix to the present Report. It is therefore pertinent to indicate the destination of the seven copies which were made of each individual recommendation:

(a, b, c) three were used for internal administrative purposes;

(d) one copy of each recommendation was left attached to the relevant claim file;

(e) one copy of each was sent to the claimant or his solicitor;

(f) one copy of each was retained by the Department of Finance after payment or disallowance;

(g) a composite stack was prepared containing a copy of each recommendation made by a Deputy Commissioner or by the Chief Commissioner; these copies were arranged serially, and the stack was deposited in the Office of the Custodian of Enemy Property, Department of the Secretary of State.

The great majority of cases were dealt with in English, but a considerable number (estimated at 1500) were presented, processed, and adjudicated either entirely or partly in French.

In a substantial number of cases two or more hearings or reviews were necessary, but no tabulated record was kept of the number of such preliminary or supplementary hearings or reviews.

The figures in the foregoing summaries are exclusive of 1402 cases in which the Treasury Board made *per diem* maltreatment awards to former prisoners of the Japanese, without reference to the Commission, under the provisions of Section 4(2) of the War Claims Regulations.

(2) A considerable number of individual "cases" involved multiple claims on the basis of the classification set out under Topic (F). For instance a case listed under a single case number frequently included claims for maltreatment, death, personal injury, and property loss, or any two or more of such claims.

The number and disposition of claims as classified may be summarized as follows:

	<i>Recommendations for Payment</i>	<i>Disallowed</i>	<i>Total</i>
Maltreatment, Civilians	592	155	
" , Armed Services ..	7,073	155	
" , by Treasury Board	1,402		9,377
Death	59	41	100
Personal Injury	146	328	474
Property	999	267	1,266
Italian Treaty Claims	58	15	73
Sundry rejected on prima facie grounds under War Claims Rules		2,309	
Sundry rejected on prima facie grounds under Italian Treaty ..		46	2,355
<hr/>	<hr/>	<hr/>	<hr/>
Total recommendations for pay- ment	10,329		
Total disallowed		3,316	
Total claims as classified			13,645
<hr/>	<hr/>	<hr/>	<hr/>

(3) A large number of individual "cases" involved claims by several claimants. The total number of claimants presenting claims to the Commission was 12,032. In addition, there was a very large number of beneficiaries, on whose behalf claims were deemed to have been presented, and each of whose eligibility and entitlement had to be separately investigated and determined.

(4) Many claims for loss of property were subdivided into numerous branches, involving properties situate in several countries or places.

(5) Claims and branches of claims for loss of movable property were again subdivided into very numerous items and groups of items, such as furniture, works of art, stock-in-trade, business equipment, personal effects, vehicles, ships, cargoes, bank deposits and securities.

No tabulated record was kept of the number of branches or items of claims involved, and it can be seen that the necessary detailed investigations were virtually innumerable.

The regional hearings in 1124 cases were grouped, wherever possible, so as to provide a maximum of convenience for claimants with a minimum of administrative expense. By far the leading centres of regional hearings were Montreal, Toronto, and Vancouver, but hearings were held at the following regional points:—

British Columbia

Vancouver—Kelowna
Victoria—Kamloops
Vernon—Nanaimo

Alberta

Edmonton
Calgary

Saskatchewan

Regina
Saskatoon
Yorkton

Manitoba

Winnipeg

Ontario

Toronto—London
Hamilton—Kitchener
Windsor—Welland
Galt

Quebec

Montreal
Quebec
Amos (Abitibi)

New Brunswick

Saint John
Moncton

Nova Scotia

Halifax—Amherst
Truro—Yarmouth

Prince Edward Island

Charlottetown

Newfoundland

St. John's—Trinity
 Cornerbrook—Grand Bank
 Grand Falls—Belleoram
 Port-au-Basque—Bai du Nord
 Open Hall—Rencontre
 Bonavista

Great Britain and The Channel Islands

London
 Jersey, C.I.

The United States

New York City
 Glendale, California.

Owing to efficient and economical administration on the part of the staff, as well as to the fact that only two of the seven Commissioners received any remuneration (on a part-time basis) whilst the remaining five (being members of provincial Courts) were paid expenses only, it was possible to keep the administration costs of the Commission within a very modest compass in comparison with the number and diversity of claims and items which had to be inquired into and determined. The Commission's office was opened early in November 1952, and was closed on 31st December 1959. Total administration expenses paid to 29th February 1960 may be analyzed as follows:

Salaries	\$441,870.17
Professional and Special Services	35,255.18
Travel	169,723.42
Freight, Express and Cartage	724.09
Postage	4,059.09
Telephones and Telegrams	9,762.80
Advertising	3,734.85
Office Stationery, Supplies and Equipment	14,539.17
Sundries	1,056.10
Total	\$680,724.87

(I) Priority of Payments

In order to guard against the depletion of the War Claims Fund to the detriment of some valid claims, the Right Honourable Advisory Commissioner recommended that awards be paid in a specified order of priority. In the order which he recommended, claims for death and personal injury ranked first, claims for maltreatment ranked second, and claims for property loss ranked from third to seventh according to the amounts awarded. (see Report, p. 84).

As it seemed obvious that the available fund would be more than sufficient to meet the death, personal injury, and maltreatment claims in full, the Government (in enacting the War Claims Regulations—Schedule, 4(a)) combined these three types of claims under a single first priority rating, to which I have referred as No. (1-2). Approved awards of these classes were therefore, as far as priority was concerned, paid in full from the outset.

As the ratio of established property claims to the balance of the War Claims Fund was gradually revealed, payments on individual awards for property losses were progressively increased from a beginning of \$2,500 (Priority 3(a) established 21st June 1954) to \$100,000 (Priority 6(b)) effective 6th December 1958).

For convenience of reference, the orders of priority, as ultimately established by successive amendments, are set out in consolidated form in R.P. 40, (Appendix "G" to this Report).

Only nine awards for property loss recommended by the Commission were in excess of \$100,000, and those are therefore the only claims which have been affected by priority restrictions since December 1958. From the figures shown under Topic (J) it appears that it will ultimately be possible to pay the balance of the nine claims almost, though not quite, in full.

(J) The War Claims Fund

The sources and probable extent of the War Claims Fund are outlined by the Right Honourable Advisory Commissioner at pages 4-10 of his Report. The actual credits to the Fund up to 29th February 1960 may be summarized as follows:

German Assets

Transferred by Custodian	\$ 5,100,000	
From other sources (approx.)	5,131,200	
Earnings after deposit "	804,100	
		<hr/>
		\$11,035,300

Japanese Assets

Transferred by Custodian	\$ 3,650,000	
From other sources (approx.)	118,200	
Earnings after deposit "	421,200	
		<hr/>
		4,189,400
		<hr/>
Total credits (approx.)		\$15,224,700

It is anticipated that a few further credits may be available to the Fund through receipts from the Inter-Allied Reparation Agency as well as from other possible sources such as the Custodian.

Disbursements from the Fund up to the same date were as follows:

<i>Claims Paid</i>	<i>No. of Claims</i>	
Maltreatment	9,067	\$ 6,480,657.33
Death	59	504,414.58
Personal Injury	146	236,478.44
Property Loss—in full	975	3,471,282.69
" " partial	22	942,492.73
		<hr/>
Total Claims paid	10,269	\$ 11,635,325.77
Administration Expenses		680,724.87
		<hr/>
Total disbursements to 29 Feb. 1960		\$ 12,316,050.64
In addition, there were payments recommended but not made, totalling		3,494,563.00
		<hr/>
making an estimated amount required to pay all claims in full		\$ 15,810,614.00
		<hr/> <hr/>

The awards not paid in full may be analysed as follows:

Maltreatment claims	\$ 4,363.00
13 claims subject to satisfaction available from West Germany (this amount will presumably not have to be paid in full from the Fund)	78,000.00
9 property claims whose excess of \$100,000.00 each awaits application of priority No. 7	3,412,200.00
	<hr/>
	\$ 3,494,563.00

A more detailed analysis of claims paid will be found in Appendix "H" to this Report.

It will be seen that the credits to the War Claims Fund are sufficient to pay the awards recommended by the Commission almost, though not quite, in full. The deficiency will be borne pro rata by the unpaid portions of the nine property awards which are in excess of \$100,000 per claimant.

Section 5 of the War Claims Regulations (Appendix "A": see also Report of Advisory Commissioner, p. 92) made it clear that no "right to payment" was conferred by the Regulations. The Treasury Board, however, almost invariably acted upon the recommendations of the Commission and implemented them by payment, subject to priority orders and to reservations respecting satisfaction anticipated from alternative sources.

Only two minor groups of my recommendations for payment appear to have been disallowed by the Treasury Board:

- (a) Awards for maltreatment arising from murder of prisoners-of-war. These were first recommended on interpretation of the existing Rules, and later by way of proposed amendment—see under Topic "B".
- (b) Awards for loss of wages or other earnings due to delay in returning to work as a result of an operation of war, such as the sinking of the *Athenia*. In a number of such cases the Commission recommended modest awards for quasi-property loss but the Treasury Board rejected such items unless they resulted from personal injury.

(K) General Recommendations

It is difficult, at the present stage, to make any prospective recommendations that would be of predictable service or advantage; and that, for two reasons.

In the first place, the code of "adjudication" outlined under Topic (B) proved to be eminently workable and generally equitable in its operation.

In the second place, the circumstances of any similar inquiry in the future, if unfortunately the necessity for one arises, are liable to be so entirely different that any prospective observations on the basis of the present inquiry might prove quite valueless.

With those two limitations in mind, and with considerable hesitation owing to the general and detailed excellence of the "Ilsley Report", I proceed to outline a very few suggestions which the light of more than seven years' inquiry has indicated as improvements in the existing code.

The most prevalent criticism of the War Claims Rules has been that claims for death and injuries to the person did not (except as to actual time of

payment) have the moral priority to which they were entitled, in the view of the learned Advisory Commissioner (Report, pp. 84-85), as against claims for loss of material property and particularly business assets or investments. In other words, it has been easier to recover adequate compensation for the loss of material assets than for the loss of an arm or of a leg or of physical or mental health, or even for loss of life. In my opinion, there is considerable merit in this criticism, arising from the difficulty of establishing the mathematical quantum of pecuniary loss in death and personal injury cases, and from the preclusion, (by the Rules), in such cases, of consideration of pain, suffering, and wounded feelings.

To establish the recognized priority of claims for death and injuries to the person, I would recommend that, in any future code of adjudication:

(1) Provision be made for a reasonably modest solatium for persons injured, or for the dependents of persons killed, by operations of war.

OR

(2) Provision be made for a basic presumption of pecuniary loss in such cases, in addition to the specific pecuniary loss, if any, which each claimant is able to establish.

(3) Provision be made that benefits receivable from a group scheme of pension, gratuity, or other compensation for civilian workers, such as outlined on page 31 of the Advisory Commissioner's Report, be deductible as "Satisfaction Otherwise Provided For" rather than being a complete bar, as under the present code.

The Commission has frequently been of the opinion that the benefits from such schemes have not provided full or adequate compensation; and it seems inequitable that such benefits should entirely bar claims against the War Claims Fund, whereas accident insurance received is merely deductible and life insurance is not taken into account.

The three foregoing recommendations should be applicable only to cases of civilians killed or injured. Compensation for death or injury of members of the armed services is provided by the well regulated provisions of the *Canadian Pension Act*, and is subject to review from time to time in the light of developing circumstances.

As I have already intimated, the 1958 supplementary payments on maltreatment claims appear to have established an equitable ratio between the amount awarded on those claims and the assets of the War Claims Fund. I would, however, repeat my former recommendations incidental to such claims and suggest that in any future code:

(4) Provision be made for a modest solatium to "dependents" of prisoners of war who have been wilfully and criminally put to death by their enemy captors.

(5) Provision be made that where a person who, if he had lived, would have been entitled to a maltreatment award has died, and is not survived by a spouse or children, the award should survive for the benefit of his parent or parents without proof of actual pecuniary dependency.

It has seemed anomalous to the Commission that a maltreatment award, which the Rules regard as being highly personal in its character rather than

being in the nature of pecuniary compensation, should survive for the benefit of a wife or children who may be affluent in their own rights, but not for the benefit of parents who may be near the border line of dependency or poverty. The suggested amendment could be achieved by deleting the word "dependent" in the list of relatives enumerated at the foot of page 55 of the Advisory Commission's Report, or by providing that the enumerated relatives should be deemed to be dependents without proof of actual pecuniary dependency. The presumption of dependency would then also be available for a surviving husband, though incidentally no claim by a surviving husband for maltreatment of his wife has come before the present Commission.

As to claims for loss of or damage to property, my principal suggestion would be that:

(6) the Advisory Commissioner's recommendation that a minimum percentage of Canadian-owned capital should form a third test of the Canadian national status of a claimant corporation be restored and the recommended percentage preferably increased;

or (still preferably, in my opinion)

(7) the eligibility of a corporation to claim as such be entirely deleted; in other words claims through corporations (Canadian or otherwise) should be limited to the losses sustained by Canadian shareholders or incumbrancers, and the relative awards should belong to the Canadian shareholders or incumbrancers and not to the corporations.

It has seemed inequitable to the Commission that non-Canadian shareholders should, by the mere fact of incorporation in Canada, be eligible to receive from the War Claims Fund compensation which they could not have claimed in the absence of incorporation.

The foregoing suggestions are, of course, proposed in the context of the existing War Claims Regulations and the Rules thereby established.

This, my Report, is respectfully submitted this 4th day of April, A.D. 1960.

(Sgd.) THANE A. CAMPBELL
Chief War Claims Commissioner

to the Honourable, The Secretary of State,
Ottawa.

APPENDICES
to 1960 General Report
of Chief War Claims Commissioner

APPENDIX "A"

P.C. 1954-1809

PRIVY COUNCIL CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
TUESDAY, the 23rd day of NOVEMBER, 1954

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Secretary of State and pursuant to *The Appropriation Act, No. 4, 1952*, Vote No. 696, is pleased to order as follows:—

1. The War Claims Regulations, established by Order in Council P.C. 4267 of 9th October 1952, as amended, are hereby revoked; and
2. The annexed "War Claims Regulations" are hereby made and established in substitution for the Regulations hereby revoked.

Certified to be a true copy,

(Sgd.) R. B. BRYCE,
Clerk of the Privy Council.

War Claims Regulations

1. These regulations may be cited as the War Claims Regulations.
2. In these regulations,
 - (a) "war claim" means a claim for compensation arising out of World War II;
 - (b) "War Claims Commissioner" means the Chief War Claims Commissioner appointed for the purpose of inquiring into, reporting upon and making recommendations with respect to the payment of war claims in particular cases;
 - (c) "War Claims Fund" means the War Claims Fund established by Vote 696 of *The Appropriation Act, No. 4, 1952*; and
 - (d) "war claims rules" and "rules" means the rules established by Section 3.
3. The recommendations contained in the Report of the Advisory Commission on War Claims dated February 25, 1952, modified to the extent specified in the *Schedule* hereto, shall constitute the rules governing payment out of the War Claims Fund of compensation in respect of war claims.
4. (1) Payment may be made out of the War Claims Fund, with the approval of the Treasury Board, to a person, or to another on his behalf, in respect of a war claim, of an amount that, in the opinion of the War Claims Commissioner, that person is eligible to receive under the war claims rules.
(2) Notwithstanding subsection (1), payment may be made out of the War Claims Fund of compensation for maltreatment at the *per diem* rates specified in the rules to a person, or to another on his behalf, where, in the opinion of the Treasury Board, that person is eligible to receive such compensation under the rules.
(3) In approving payments under this section, the Treasury Board shall determine the times at which such payments shall be made to give effect to the order of priorities established by the war claims rules.
5. No right to payment is conferred by these regulations.
6. These regulations shall be administered by the Secretary of State.

SCHEDULE

1. *Claims by Canadians.*
 - (a) Where a claim is made for maltreatment and the person who suffered the maltreatment was at the time when the maltreatment occurred a member of the armed forces of Canada, the claimant shall be deemed to have been a Canadian both at the time of the maltreatment and at the time of presentation of the claim.
 - (b) For the purpose of determining whether a corporation is a Canadian at any relevant time, of the three tests recommended by the Advisory Commission on War Claims, those as to residence and trading only are retained and the test relating to ownership of outstanding securities is deleted.
 - (c) A corporation regarded as having had residence both in Canada and outside of Canada at any relevant time may be treated as at that time having had Canadian residence only if it then was incorporated in Canada.

2. Maltreatment.

(a) In respect of the European Theatre:

Where a person has been in the direct custody of members of an organization declared a criminal organization by the International Military Tribunal, Nuremberg, (such organizations being the SS, SD, Gestapo and Leadership Corps), and is ineligible for an award under the Sumner Commission test, he may, if held in such custody for a period of fourteen days or more, be awarded one dollar *per diem* for each day of such custody, but should such custody have been for less than fourteen days any award on a *per diem* basis shall be within the discretion of the War Claims Commission. The receipt of or the eligibility for a pension under the Pension Act for disability consequent upon maltreatment shall not be taken into account in determining eligibility for or the amount of a *per diem* award or a lump sum award for maltreatment.

(b) In respect of the Far Eastern Theatre:

Maltreatment awards at the rate of one dollar *per diem* to or in respect of former prisoners of war of the Japanese eligible therefor under the Report of the Advisory Commission on War Claims may be paid in a lump sum as in the case of such awards to or in respect of civilians, and such payments shall include any benefit for which the recipients may be eligible pursuant to Article 16 of the Treaty of Peace with Japan.

(c) Surviving awards—Civilian claims:

Where there is a valid death claim in addition to a claim for maltreatment the accrual of the benefits of the maltreatment award to the widow, dependent husband, child, children, dependent parent or parents of the deceased as the case may be, shall not be taken into account in determining the pecuniary loss which he, she, or they, have suffered from the death.

(d) Surviving awards—dependents of service personnel:

Where maltreatment caused death but there is no valid death claim because the deceased was a prisoner of war and pension is payable on account of his death, the maltreatment award payable to the widow, dependent husband, child, children or other dependent shall be paid to such dependent notwithstanding the fact that such dependent is in receipt of a pension in respect of the death, and without any deduction on account of such pension.

3. Claims for Property losses.

- (a) In any case in which final compensation for such loss has been provided for by or under an Act of the Parliament of Canada or by the Governor in Council, no claim on the War Claims Fund in respect of such loss shall be admitted.
- (b) In the recommendation relating to the payment of certain expenses of claimants, the words "in former enemy or enemy-occupied territory" are substituted for the word "abroad".

4. Priorities.

The following shall be the effective orders of priority:

1. Claims for compensation for death, personal injury and maltreatment, in full, or

2. if the fund is not sufficient to pay them in full, then *pro rata*.
 3. (a) Claims for compensation for property losses up to \$2,500 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
(b) All remaining claims for compensation for property losses up to an additional \$2,500 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
 4. All remaining claims for compensation for property losses up to an additional \$10,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
 5. All remaining claims for compensation for property losses up to an additional \$15,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
 6. (a) All remaining claims for compensation for property losses up to an additional \$20,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
(b) All remaining claims for compensation for property losses up to an additional \$50,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
 7. All remaining claims for compensation for property losses in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
5. *Interest.*
- Simple interest at three *per centum per annum* may be paid on the following classes of awards:
- (a) For property losses on the high seas from the date of the loss;
 - (b) For personal injury or death on the high seas from the date of the loss;
 - (c) For disbursements for medical and similar expenses from the date of the disbursement; and
 - (d) For all other claims, excluding awards for maltreatment, from January 1, 1946.
6. *Limitation of Time for Filing Claims.*
- (a) Notice of a claim must be received by the War Claims Commission not later than November 30, 1954.
 - (b) A claim for maltreatment shall be deemed to be presented at the time when it is first made or on the date of coming into force of the War Claims Regulations, whichever is the later.
7. Where the War Claims Commissioner is satisfied that a claimant is entitled to receive a payment of compensation from the Governments of Hungary or Roumania pursuant to the Treaties of Peace with Hungary and with Roumania, and that the amount thereof has not been paid to the claimant, he shall not in applying the rules regard such entitlement as satisfaction otherwise provided for; provided that the claimant has assigned his rights to such entitlement to the Crown in right of Canada.

APPENDIX "B"

P.C. 1955-1030

PRIVY COUNCIL CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 7th day of JULY, 1955.

PRESENT:

HIS EXCELLENCY

THE ADMINISTRATOR IN COUNCIL:

His Excellency the Administrator in Council, on the recommendation of the Secretary of State and pursuant to *The Appropriation Act, No. 4, 1952*, Vote No. 696, is pleased to amend the War Claims Regulations made and established by Order in Council P.C. 1954-1809 of 23rd November 1954, and the said Regulations are hereby amended as follows:

1. By adding to section 4 thereof the following new subsection (4):

(4) Notwithstanding anything in this section, where a payment in respect of a war claim may be or could have been made to a person, or to another on his behalf, from a source other than the War Claims Fund, the Treasury Board may determine the portion, if any, of the payment and the time at which such portion may be paid to that person or to another on his behalf out of the War Claims Fund.

2. By inserting in the *Schedule* thereto, immediately before section 7 thereof, the following heading:

Satisfaction from Source other than the War Claims Fund.

3. By adding to the *Schedule* thereto, immediately after section 7 thereof, the following new section 8:

8. In any case where a payment in respect of a war claim may be or could have been made to a person, or to another on his behalf, from a source other than the War Claims Fund and where the War Claims Commissioner is of opinion that undue delay would result from postponement of his recommendation until he could assess with reasonable certainty the possibilities of recovery of compensation from such other source, he may make his recommendation immediately on the basis of the information then available.

Certified to be a true copy,

(Sgd.) R. B. BRYCE

Clerk of the Privy Council.

APPENDIX "C"

P.C. 1956-624

PRIVY COUNCIL CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 19th day of APRIL, 1956.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Treasury Board, pursuant to *The Appropriation Act No. 4, 1952*, Vote 696, is pleased, hereby, to amend the War Claims Regulations made by Order in Council of 23rd November, 1954, P.C. 1954-1809, as amended, by revoking clause 4 of section 4 of the schedule thereto and substituting therefor the following:

4. (a) All remaining claims for compensation for property losses up to an additional \$5,000. in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

(b) All remaining claims for compensation for property losses up to an additional \$5,000. in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

Certified to be a true copy,

(Sgd.) R. B. BRYCE

Clerk of the Privy Council.

APPENDIX "D"

P.C. 1958-1467

PRIVY COUNCIL
CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
THURSDAY, the 23rd day of OCTOBER, 1958

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Secretary of State, pursuant to Vote No. 696 of *The Appropriation Act, No. 4, 1952*, is pleased hereby to amend the War Claims Regulations made by Order in Council P.C. 1954-1809 of the 23rd November, 1954, as amended, in accordance with the *Schedule* hereto.

Certified to be a true copy,

(Sgd.) R. B. BRYCE

Clerk of the Privy Council.

Schedule

1. Subsection (2) of section 4 of the War Claims Regulations is revoked and the following substituted therefor:

(2) Notwithstanding subsection (1), payment may be made out of the War Claims Fund of compensation for maltreatment in accordance with the rules to a person, or to another on his behalf, where, in the opinion of the Treasury Board, that person is eligible to receive such compensation under the rules.

2. Section 2 of the *Schedule* to the said Regulations is amended by adding thereto the following paragraphs:

(e) Additional payments:

There may be paid to every person to or in respect of whom, on or prior to the coming into force of this paragraph, payment of a maltreatment award was authorized to be made, an additional amount equal to fifty per cent of the maltreatment award so authorized, but if that person is dead, the additional amount shall be paid to such person as the Treasury Board designates.

(f) Increases in rates:

In their application to persons to or in respect of whom no payment of a maltreatment award was authorized on or prior to the coming into force of this paragraph but who may be eligible to receive such an award, paragraphs (a) and (b) shall be read and construed as if for the words "one dollar" there were substituted the words "one dollar and fifty cents".

3. Paragraph (a) of section 5 of the said *Schedule* to the said Regulations is revoked and the following substituted therefor:

(a) For property losses

(i) on the high seas, or

(ii) on land that was not at any time during World War II included in enemy or enemy occupied territory
from the date of the loss;

APPENDIX "E"

P.C. 1954-1723

PRIVY COUNCIL CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
THURSDAY, the 18th day of NOVEMBER, 1954.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance and pursuant to the Treaties of Peace (Italy, Roumania, Hungary and Finland) Act, 1948, is pleased to order as follows:—

1. The War Claims (Italy) Settlement Regulations, established by Order in Council P.C. 5818 of 6th November 1951, as amended, are hereby revoked; and
2. The annexed "War Claims (Italy) Settlement Regulations" are hereby made and established in substitution for the Regulations hereby revoked.

Certified to be a true copy,
(Sgd.) R. B. BRYCE
Clerk of the Privy Council.

Treaties of Peace (Italy, Roumania, Hungary and Finland) Act—War Claims (Italy) Settlement Regulations

REGULATIONS

1. These regulations may be cited as the *War Claims (Italy) Settlement Regulations*.

2. (1) In these regulations,

(a) "Canadian citizen" means a person who, on the 15th day of September, 1947 (the date of coming into force of the Peace Treaty) was a Canadian citizen; and

(b) "Peace Treaty" means the Treaty of Peace between Canada and Italy signed at Paris on the 10th day of February, 1947, and approved by *The Treaties of Peace (Italy, Roumania, Hungary and Finland) Act*, 1948.

(2) Payment to Canada by Italy of the sum of 290 million lire in accordance with Article 1 of the note of the Secretary of State for External Affairs dated the 20th day of September, 1951, addressed to the Minister of Foreign Affairs of Italy and approved by Order in Council P.C. 5649 of 22nd October 1951, constitutes satisfaction by Italy of its obligations to Canada and Canadian nationals under the Peace Treaty with the exception of:

(a) debts and bonds referred to in Article 2 of the said note;

(b) the claims of Aluminium Limited or its Italian subsidiaries and of the Sir Alexander Mackenzie estate which will be dealt with separately in accordance with the relevant provisions of the Peace Treaty; and

(c) claims under paragraph 6 of Article 78 of the said Peace Treaty.

3. (1) The Minister of Finance may pay any part of the said sum of 290 million lire to a Canadian citizen who establishes to the satisfaction of the Minister of Finance that he is entitled to receive compensation under the Peace Treaty with Italy in respect of any claim not coming within the exceptions specified in subsection (2) of section 2, but the payment shall not exceed the amount that is payable to that person in accordance with the Peace Treaty.

(2) For the purposes of subsection (1), the amount of compensation to which a person is entitled under the Peace Treaty shall be determined on the basis of values existing on the day on which final payment was made to Canada by Italy of the sum of 290 million lire specified in section 2.

(3) Where a Canadian citizen has died on or after the 15th day of September, 1947, the Minister of Finance may pay to the personal representative of the deceased person or such other person as appears to the Minister of Finance to be entitled to the assets of the deceased person, any amount that he would have paid under subsection (1) to the deceased person if he had survived, but no payment shall be made under this subsection to a person who is not a United Nations National within the meaning of the Peace Treaty.

4. The payment to any person of an amount that the Minister of Finance designates as a final payment in respect of the claim of that person under the Peace Treaty constitutes full satisfaction of all claims of that person under the Peace Treaty.

5. No person shall receive a payment under this Order unless he has applied in writing to the Government of Canada on or before the 31st day of December, 1951.

6. (1) In administering these regulations the Minister of Finance may refer any matter to an advisory commissioner to be appointed by the Governor in Council, called the "Advisory Commissioner on Claims under the Treaty of Peace with Italy", hereinafter referred to as the "Commissioner", but the Minister of Finance is not bound by the findings and recommendations of the Commissioner.

(2) The Commissioner shall, if so requested by the Minister of Finance, inquire into and make reports and recommendations to the Minister of Finance concerning

- (a) the validity of claims by Canadian citizens under the Peace Treaty that do not fall within the exceptions specified in subsection (2) of section 2,
- (b) the amount to which a Canadian citizen is entitled under the Peace Treaty in respect of a claim that does not fall within the exceptions specified in subsection (2) of section 2, and
- (c) any other matter arising out of the administration of these regulations.

(3) The Commissioner shall have the powers of a commissioner appointed under Part I of the *Inquiries Act*.

(4) The Commissioner shall receive such remuneration as the Governor in Council determines and his remuneration and the expenses of the commission shall be paid out of moneys provided by Parliament.

APPENDIX "F"

P.C. 1955-977

PRIVY COUNCIL CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 30th day of June, 1955.

PRESENT:

HIS EXCELLENCY
THE ADMINISTRATOR IN COUNCIL:

His Excellency the Administrator in Council, on the recommendation of the Minister of Finance and pursuant to the Treaties of Peace (Italy, Roumania, Hungary and Finland) Act, 1948, is pleased to amend the War Claims (Italy) Settlement Regulations made and established by Order in Council P.C. 1954-1723 of 18th November 1954, and the said Regulations are hereby amended by revoking subsection (3) of section 3 thereof, and by substituting therefor the following new subsections (3) and (4):

- (3) Where a Canadian citizen has died on or after the 15th day of September, 1947, but before the day on which final payment was made to Canada by Italy of the sum of 290 million lire specified in section 2, the Minister of Finance may pay to the personal representative of the deceased person or such other person as appears to the Minister of Finance to be entitled to the assets of the deceased person, any amount that he would have paid under subsection (1) to the deceased person if he had survived, but no payment shall be made under this subsection to a person who is not a United Nations national within the meaning of the Peace Treaty.
- (4) Where a Canadian citizen has died on or after the day on which final payment was made to Canada by Italy of the sum of 290 million lire specified in section 2, the Minister of Finance may pay to the personal representative of the deceased person or such other person as appears to the Minister of Finance to be entitled to the assets of the deceased person, any amount that he would have paid under subsection (1) to the deceased person if he had survived.

Certified to be a true copy,

(Sgd.) R. B. BRYCE

Clerk of the Privy Council.

APPENDIX "G"

Rules of Procedure Re Disposition of Claims

(Consolidated for Reference)

I, THANE A. CAMPBELL, Chief War Claims Commissioner, appointed to inquire into and report upon claims by Canadians arising out of World War II, DO HEREBY MAKE AND ESTABLISH the following Rules of Procedure for the hearing and disposition of such claims as may be payable from the War Claims Fund:

1. Notice of claims in respect of maltreatment, personal injury, death or loss of property must be received by the Commission not later than November 30, 1954. Persons who have not, on or before the 22nd day of October 1952, given notice of their claims to the War Claims Branch or to the Office of the Custodian of Enemy Property, Department of the Secretary of State, Ottawa, are required to forward such notice to THE WAR CLAIMS COMMISSION, OTTAWA, CANADA, prior to November 30, 1954. Notice of claim may be informal such as a letter, but it should contain:
 - (a) the full name and address of the claimant, and particulars of the claimant's national status or of service in World War II with the armed forces of Canada; and
 - (b) the nature and particulars of the claim and the date and circumstances of the loss, injury or maltreatment.
2. The Commission may require each or every claimant to file with the Commission a Statement of Claim on forms to be provided by the Commission, and duly verified by affidavit or statutory declaration.
3. The Commission shall forthwith acknowledge by ordinary post, receipt of every such Statement of Claim, and inform the claimant that he will be further advised as to the steps to be taken for the disposition of his claim. Such acknowledgment shall state that it is not to be taken as an admission of the completeness of the Statement of Claim, or the validity of the claim thereby alleged.
4. Notwithstanding the principle that the "burden of establishing the validity of a war claim and the proper amount to be paid should rest upon the claimant", (Report of Advisory Commission, p. 92) it shall be the policy of the Commission to assist each claimant in the preparation and assembling of materials in support of a potentially valid claim, where such materials are in the nature of government records, or are more readily available to the Commission than to the claimant. This Rule shall not be interpreted to authorize the Commission to encourage claimants to proceed with claims which are clearly not valid or maintainable, but it shall be the duty of the Commission frankly to point out to a claimant, at the earliest reasonable date, any obviously insurmountable defects in his alleged

Notice of Claim.

Statement of Claim.

Acknowledgment of Statement of Claim.

Assistance for claimant.

claim. For the purpose of carrying out the intent of this Rule, the staff of the Chief Commissioner shall prepare and process the file of each claim in the manner outlined by paragraph (4) on p. 93 of the Report of the Advisory Commission on War Claims.

When no
prima facie
claim
disclosed.

5. After a preliminary consideration of any Statement of Claim and the materials furnished in support thereof, the Chief Commissioner shall, if it is abundantly clear that no valid claim is *prima facie* disclosed, notify the claimant, by ordinary post, that his alleged claim does not fall within one of the classes of cases in which compensation is payable from the War Claims Fund; and such notification shall set forth the reasons therefore. If the claimant notwithstanding such notification, insists that his claim be referred for hearing, or if the Chief Commissioner is subsequently of the opinion, by reason of additional materials or otherwise, that a valid claim may be disclosed, the Chief Commissioner shall refer the claim for hearing by a Deputy Commissioner.

Optional
modes of
hearing.

6. When any claim, other than a claim for maltreatment of a former prisoner of war in Europe (see Rules 45 and 46), is ready to be referred to a Deputy Commissioner for hearing, the Chief Commissioner shall notify the claimant, by ordinary post, that the claimant has the option of electing one of three methods for the hearing and disposition of his claim, namely:

- (a) a hearing and disposition on the strength of the Statement of Claim and documentary or written materials filed therewith, and without oral hearing or attendance of the claimant or his counsel or representative;
- (b) a hearing at Ottawa at a time to be fixed by the Deputy Commissioner, such hearing to be attended by the claimant or his counsel or representative;
- (c) a hearing at a regional point to be determined by the Chief Commissioner;

and the claimant shall also be notified that the holding of regional hearings will necessarily be delayed until at least a substantial number of the claims calling for regional hearings have been duly filed, processed and classified.

Notice of
Choice.

7. Upon receipt of the notification mentioned in Rule 6, a claimant shall notify the Chief Commissioner in writing as to his preference among the three available modes of hearing.

Documen-
tary
Hearing.

8. If a claimant elects a documentary hearing under paragraph (a) of Rule 6, or if the claim is for maltreatment of a former prisoner of war in Europe (see Rule 45), the Chief Commissioner shall refer the claim to a Deputy Commissioner at Ottawa, who shall proceed to hear and dispose of the claim on the merits of the Statement of Claim, documents and other written materials furnished in support thereof, without further notice to the claimant.

Oral
Hearing at
Ottawa.

9. If a claimant elects an oral hearing at Ottawa under paragraph (b) of Rule 6, the Chief Commissioner shall refer the claim for hearing to a Deputy Commissioner at Ottawa. The Deputy Commissioner shall fix a date for such hearing and shall direct his Registrar to notify the claimant or his counsel or representative. The Deputy

Commissioner may, upon the reasonable request of the claimant, or for any other cause which appears to him to be reasonable, postpone or adjourn any hearing, either before or at the time fixed therefor, and shall give such notice as may be reasonable of any proposed postponement or adjournment.

10. If a claimant elects a regional hearing under paragraph (c) of Rule 6, the Chief Commissioner shall, as soon as may be reasonably feasible in view of the assembling and classification of claims requiring to be heard regionally throughout Canada, refer such claim to a Deputy Commissioner assigned to conduct hearings in the region most convenient for the hearing of such claim. Regional Hearing.

11. The Chief Commissioner shall furnish each Deputy Commissioner with a list of places at which hearings should be conducted in the region to which he has been assigned. The Deputy Commissioner, with the approval of the Chief Commissioner, may conduct hearings at additional points in such region. Places of Hearing.

12. Subject to Rule 11, the Deputy Commissioner to whom a claim is referred for regional hearing shall fix a place and time therefor, and shall instruct his Registrar to notify the claimant or his counsel or representative of the place and time so fixed. The Deputy Commissioner may postpone or adjourn the hearing from time to time in the same manner as a Deputy Commissioner conducting a hearing at Ottawa. Notice of Regional Hearing.

13. In the case of a claimant resident outside Canada and not represented by an attorney or agent in Canada, and particularly if the claimant's present address is not accurately known by the Commission, any notification required by these Rules or otherwise to be sent to such claimant may be forwarded through the Department of External Affairs, or in such other manner as the Chief Commissioner may consider adequate. Notice to Claimants outside Canada.

14. A claimant shall have the right to be present at any hearing of his claim, either in person or by attorney or counsel, or by any accredited representative. Claimant may attend.

15. Any hearing before a Deputy Commissioner may be attended by counsel or a legal adviser of the Commission. It shall not be the duty of such counsel or legal adviser to obstruct or oppose the due presentation of a reasonably valid claim but rather to oppose the allowance of claims which appear to be unfounded in merit or excessive in amount. It may even be the duty of such counsel or legal adviser to assist a meritorious claimant in the presentation of materials necessary to support his claim. Commission Counsel.

16. After hearing and due consideration of a claim coming before him, the Deputy Commissioner shall find the facts material thereto and shall report to the Chief Commissioner (with his reasons), his findings and recommendation whether any, and if so, what amount should be paid in respect of the claim out of the Fund, having regard to satisfaction otherwise provided for, but subject to the application of such priority provisions as may be applicable. Report of Deputy Commissioner.

- Copy to Claimant.** 17. (a) The Commission shall furnish the claimant, or his counsel or representative, by ordinary post, with a copy of the report and of the recommendation on the claim made by the Deputy Commissioner, and shall therewith notify the claimant that if he feels himself aggrieved by the report and recommendation, he must forthwith notify the Chief Commissioner in writing to that effect, stating his reasons for dissatisfaction and requesting a review by the Chief Commissioner on the recommendation made by the Deputy Commissioner.
- Request for Review.**
- Exception.** (b) If the report of the Deputy Commissioner recommends payment to a claimant of substantially the total amount claimed it shall not be necessary for the Commission to furnish such claimant or his counsel with a copy of the report and recommendation of the Deputy Commissioner or with the notification prescribed by paragraph (a) to be sent therewith. But in any case falling under Rule 20, if the claimant has not already been furnished with a copy of the report and recommendation of the Deputy Commissioner, the Chief Commissioner shall attach such copy to the notification required by Rule 20. (*Originally Rule 41*).
- POW Claims.** (c) In any claim for maltreatment of a former prisoner-of-war in Europe, if the Deputy Commissioner has recommended an award of \$200.00 by reason of the application of the normal minimum, and if:
- (i) the claimant was in custody for 300 days or less; or if
 - (ii) the claimant was in custody for more than 300 days but the Chief Commissioner is of opinion that the evidence clearly does not justify an upward revision of the award;
- the sum of \$200.00 shall, for the purposes of paragraph (b), be presumed to be substantially the total amount claimed, and the Chief Commissioner may proceed to review the award without prior notice to the claimant, subject always to the provisions of Rule 20. (*Originally Rule 53*).
- Report of Counsel.** 18. It shall be the duty of the senior counsel or legal adviser of the Commission to indicate in writing to the Chief Commissioner any respect in which the report or recommendation of the Deputy Commissioner appears to call for review.
- Review.** 19. The Chief Commissioner shall review the report and recommendation of the Deputy Commissioner in the following manner.
- Notice of Review.** 20. Before making any final recommendation which departs from that of the Deputy Commissioner's recommendation adversely to the claimant, the Chief Commissioner shall notify the claimant outlining (with reasons) the respects in which his recommendation may depart from that of the Deputy Commissioner.
- Written Argument.** 21. In every case falling under Rule 20, and in every case where a claimant has requested a review under Rule 17, the Chief Commissioner shall, before completing his review, extend to the claimant the privilege of presenting a written argument, setting forth his reasons for the confirming, reversing, or modifying of the Deputy Commissioner's recommendation, as the case may be, but, subject to Rule 22, there shall be no right to an oral hearing on review.

22. The Chief Commissioner, in his absolute discretion, either upon Rehearing. the request of the claimant or for sufficient reason otherwise appearing, may in the course of his review conduct a rehearing of the claim either in part or in whole, but the place of such rehearing need not be determined on a regional basis except in so far as the number and importance of rehearings to be held in any particular region may warrant. The claimant shall have the usual notice of the time and place of rehearing, and shall have the right to attend in person or by his counsel or representative.

23. In arriving at his decision in the course of a review, the Chief Commissioner shall take into account the following: Review by Chief Commissioner.

- (a) all materials presented for consideration at the hearing before the Deputy Commissioner;
- (b) the findings and recommendation of the Deputy Commissioner, with the reasons given in support thereof, and including any supplementary report made by the Deputy Commissioner under Rule 25;
- (c) the written argument, if any, presented by the claimant;
- (d) any submissions made by counsel or legal adviser of the Commission;
- (e) any new materials presented in the course of a rehearing or partial rehearing, if allowed.

24. The Chief Commissioner may make such findings of fact and Findings. reach such conclusions of law as he might have done if he were hearing the claim in the first instance, but he shall, in general, accord to the findings of fact made by a Deputy Commissioner consideration analogous to that generally accorded by a court of appeal to the findings of a tribunal of first instance. The Chief Commissioner shall, however, bear in mind the desirability of a general uniformity of findings as among claims disposed of by the various Deputy Commissioners, particularly in respect to the amount of compensation to be awarded in classes of cases based on substantially similar facts.

25. In the course of any review, the Chief Commissioner may refer the Deputy Commissioner's report back to him and may request a further report from the Deputy Commissioner with particular reference to any points which do not appear to have been covered by the original recommendation. Reference back to Deputy Commissioner.

26. (a) After full consideration of all matters properly before him on the review, the Chief Commissioner may either approve, with or without variations, or reverse the Deputy Commissioner's findings and recommendation and shall thereupon make his own recommendation on the claim to the Government after applying the priority provisions, if applicable. Decision and Report of Chief Commissioner.

(b) Upon the making of any final report or recommendation by the Chief Commissioner under Rule 26 (a), the Commission shall furnish the claimant with a copy of such recommendation. (*Originally Rule 42*).

(c) Paragraph (b) shall not apply to a case in which (i) the claimant has been furnished with a copy of the Deputy Commissioner's Report; and (ii) the claimant has not requested any amendment Exceptions.

of that Report; and (iii) the Chief Commissioner's Recommendation merely approves the Report of the Deputy Commissioner without substantial variation; or to a case in which (iv) some question of policy may be reserved for consideration by the Government. (*Originally Rule 47*).

Summary
of Award.

(d) Upon the making of any final recommendation by the Chief Commissioner a tabulated summary shall be prepared on a form compiled with the approval of the Comptroller of the Treasury, which shall set forth the various computations necessary to indicate the amount recommended to be paid in respect of the claim, and the interest or rate of interest to be added to any payment or to any portion thereof, with the dates between which, or from which, such interest is computed. Such summary may be signed on behalf of the Chief Commissioner by the Executive Secretary to the Commission or by a Legal Adviser to the Commission. (*Originally Rule 43*).

Exception.

(e) Notwithstanding the provisions of paragraph (d) the Chief Commissioner may, with the concurrence of the Comptroller of the Treasury, dispense with tabulated summaries of maltreatment awards, or of awards which do not bear interest and which are not subject to deduction of satisfaction otherwise provided for. (*Originally Rule 55*).

Evidence.

27. The following rules of evidence shall apply both to hearings before the Deputy Commissioner, and to reviews before the Chief Commissioner whether or not the taking of additional evidence is considered proper:

Ordinary
Rules not
to apply.

(a) The ordinary rules of evidence shall not apply and any testimony or documents shall, at the Commissioner's discretion, be admissible as evidence, the question of the weight to be given to the evidence as proof being one for the Commissioner. (Report of Advisory Commission, para. 2 on p. 93).

Affidavits
and
Declarations.

(b) The Commissioner may admit any evidence taken upon affidavit or statutory declaration made before a proper officer, and shall give to such evidence the weight to which he considers it entitled, making due allowance, if he so deems proper, for the absence of an opportunity to examine orally or cross-examine any deponent.

Special
Examiners.

(c) If it is considered necessary that any witness whose attendance at an actual hearing or review is not reasonably obtainable, whether he is resident in Canada or elsewhere, should be examined *viva voce*, with due opportunity for cross-examination, the Chief Commissioner may, upon request of a Deputy Commissioner or otherwise, appoint a special examiner to take evidence of any such witness or witnesses *viva voce* at a place to be named in such appointment. A special examiner so appointed shall exercise the powers and act according to the procedural practice ordinarily applicable to special examiners so appointed by courts of civil jurisdiction. Where convenient, the special examiner to be appointed in pursuance of this Rule may be a Deputy Commissioner in a region other than that in which the hearing or review is being conducted.

- (d) A commissioner may receive in evidence any document or certified copy or exemplification thereof which would ordinarily be receivable in civil cases, but shall not be limited by any technical rules either in the admissibility or weight to be given to such evidence. In particular, a certificate signed by an appropriate officer of any department of the Government of Canada to the effect that a particular state of facts does, or does not, appear upon the records of such department, may be accepted by a Commissioner as *prima facie* evidence of the presence or absence of such record, and a Commissioner may draw such inferences as may be reasonable from the presence or absence of such record, but the Commissioner may, if he deems it necessary, require the production of a duly certified copy of the record, or extract therefrom, upon which such certificate is based. Documentary.
- (e) The certificate of any officer of the Government of Canada, who has authority by law to issue a certificate conclusively establishing any fact or circumstance, shall be accepted by a Commissioner as conclusive proof of such fact or circumstance, or of the negation thereof. Similar certificates of officials of provincial or foreign governments shall also be receivable in evidence but their effect shall not necessarily be deemed to be conclusive.
- (f) If a claim is in respect of the existence or extent of personal injury or incapacity, either of the claimant or of another person, certificates or reports of qualified medical officers or medical practitioners shall be regarded as being of the highest importance, and shall be required if they are reasonably available. If the medical evidence presented is uncertain, or conflicting, or inconclusive as to the extent or continuance of the alleged injury, the Commissioner may require evidence of an examination by an official or independent medical examiner. Such examination shall not be compulsory but the Commissioner may take into account a refusal to submit to such examination. Medical.
- (g) If a claim is for loss of, or damage to, real or immovable property or a ship, the claimant's title to, or interest in, the property lost or damaged shall be established as nearly as possible according to the usual standards of proof in civil cases. If, however, it is established to the satisfaction of the Commissioner that strict proof of title or interest is not available, by reason of destruction of official records and title deeds or otherwise, the Commissioner may admit and accept the best available evidence which he considers satisfactory in all the circumstances. Title or Interest.
- (h) If a claim is for loss of, or damage to, personal or movable property, documentary evidence of title should be submitted where possible, such as bills of sale, purchase receipts, insurance records, inventories made prior to the loss or damage, or photographs of the articles lost or damaged. Whether or not such documents are available, duly verified statements should be presented, where possible, from reliable and independent deponents having a personal knowledge of the ownership and valuation of the property, and of the cause and extent of the loss or damage thereto. Chattels.

- Computations. (i) A certificate signed by a competent officer of the Department of Finance of Canada shall be receivable in evidence as to the computation of interest, percentages, expectancy of life, present values of periodic payments, annuity values, international exchange ratios, or any other monetary computations pertinent to the findings and recommendation of a Commissioner.
- Official Signatures. (j) Any document purporting to be signed by a competent government minister or officer and otherwise receivable under these Rules, or under the general Rules of Evidence, shall be presumed to have been signed by such minister or officer, without proof of his signature or official character.
- Corroboration. 28. The following rules of corroboration shall apply both to hearings before Deputy Commissioners, and to reviews before the Chief Commissioner:
- Generally. (a) The Commissioner may require corroboration of the evidence of the claimant, or of any other witness, as to any material point sought to be established thereby.
- Documentary. (b) If evidence is not reasonably available to corroborate the testimony of any single witness on a material point requiring corroboration, the Commissioner may nevertheless accept and act upon such testimony if he considers it to be adequately supported by a document or official record. If such document or record was made by, or in pursuance of information furnished by, the claimant or his agent or witness, the onus shall be upon the claimant to satisfy the Commissioner that it was not self-serving with respect to the claim under consideration.
- Currency and Luxury Articles. (c) Where a claim is for property loss or damage in respect of currency, jewellery, works of art, curios, or other luxury articles, substantial corroborative evidence of the extent of the loss or damage should be required.
- Ownership by Canadian. (d) Where a claim is for loss of property which may reasonably have been owned by a non-Canadian, or other person who is ineligible to claim for its loss, substantial corroboration should be required to establish that such property was owned by the claimant, or by the person through whose right he claims, rather than by such ineligible person. (*Originally Rule 58*).
- Subpoenas. 29. (a) A subpoena or other request or summons to a witness, as authorized by sections 4, 8, and 9 of the *Inquiries Act*, may be issued by:
- (i) a Special Examiner, in respect of a witness whose evidence he has been authorized to take;
 - (ii) a Deputy Commissioner, in respect of any claim which has been referred to him for hearing and report, where the witness to be summoned is to be examined before the Deputy Commissioner or before a Special Examiner;
 - (iii) the Chief Commissioner, in any case.
- (b) If any witness is to be summoned at the request of a claimant for the purpose of giving evidence on behalf of such

claimant, the subpoena shall indicate to the witness that his attendance is obligatory upon payment to him by the claimant of his reasonable travelling expenses. (*Originally Rule 44*).

30. The facts adduced orally at any hearing may, and shall where reasonably convenient, be taken down in shorthand by a competent shorthand reporter or reporters appointed by the Chief Commissioner. If an official reporter so appointed is not available for attendance at any proposed hearing or group of hearings, the presiding Deputy Commissioner may similarly appoint an official reporter. Any evidence so taken down shall be transcribed into typewriting by the reporter or reporters upon the instructions of the presiding Commissioner or Deputy Commissioner, or upon the instructions of a legal adviser of the Commission. The transcript, when certified by the official reporter, shall be deemed to be an accurate report of the evidence adduced, except in so far as it may be corrected or amended by the presiding Commissioner or Deputy Commissioner from reference to his own notes. (*Originally Rule 32*).

Reporting
Evidence.

31. Every shorthand reporter before entering upon his duties under Rule 30 shall take and subscribe before the Chief Commissioner or before a presiding Deputy Commissioner an oath of office on a form prescribed by the Chief Commissioner. (*Originally Rule 33*).

Reporter's
Oath of
Office.

32. If, at any hearing or review, it is proposed to adduce any evidence, either oral or documentary, in a language which is not reasonably familiar to the presiding Commissioner, the Chief Commissioner or the presiding Deputy Commissioner shall appoint a competent interpreter, if available, for the purpose of the hearing or hearings concerned. It shall be the duty of the interpreter to translate any documentary evidence submitted to him by the presiding Commissioner or by a legal adviser to the Commission. In the case of oral evidence, the interpreter shall translate both the questions put to the witness, and the answers given by the witness thereto, in the manner and with the effect ordinarily in vogue in courts of civil jurisdiction. Every official interpreter, before entering upon his duties, shall take and subscribe before the Chief Commissioner or the presiding Deputy Commissioner an oath of office binding him to the faithful performance of his official duties. (*Originally Rule 36*).

Inter-
preters.

NOTE:—Rules originally numbered 29, 30, and 31 are now numbered 42, 43, and 44 respectively.

Rules originally numbered 44, 32, 33, and 36 are now numbered 29, 30, 31 and 32 respectively.

34. Every report or recommendation of a Commissioner or Deputy Commissioner whereby interest is allowed to any claimant shall be so expressed as to exclude compound interest at any stage. If necessary for that purpose, a report or recommendation shall state specifically the dates between or from which, and the portions of the award upon which, interest shall be calculated.

Compound
Interest
Excluded.

35. If any person to whom, or for whose benefit, an award is made by any report or recommendation is a minor according to the law of the province of such person's domicile at the time of the report or recommendation, or appears to be mentally incompetent to

Awards to
Minors and
Incompetent
Persons.

manage his affairs, whether so found by a court of competent jurisdiction or not, the Deputy Commissioner or Chief Commissioner recommending such award shall thereby recommend that the moneys payable thereunder be paid:

- (a) To the guardian, committee, curator, trustee, or other officer to whom the affairs of such beneficiary may have been legally committed; or
- (b) If no official guardian, committee, curator, trustee, or other such legal administrator has been appointed for the administration of such beneficiary's affairs, then
 - (i) to any court, or official trustee, or other such officer, as may have jurisdiction by law, in the province or country where the beneficiary resides or is domiciled, to receive or administer the assets of persons who by reason of age or mental condition are considered incompetent to manage their own affairs;
 - (ii) to a minor beneficiary over the age of 16 years, or to the natural guardian of a minor or incompetent beneficiary, if the Commissioner recommending the award considers that the amount thereof is so small as not to necessitate legal trusteeship.

36. *Now numbered 32.*

Further
Computa-
tions.

37. If, in the course of a hearing, it appears to the presiding Commissioner or Deputy Commissioner that any computation of interest, percentages, expectancy of life, present values of periodic payments, annuity values, priorities, inflation or depreciation of exchange values, international exchange ratios, or any other monetary computations pertinent to the determination of the hearing, are not sufficiently or satisfactorily established by the materials in evidence, the Commissioner or Deputy Commissioner shall reserve his decision pending receipt of a certificate of the required computation or computations purporting to be signed by a proper officer of the Department of Finance.

Correction
of
Translation.

38. Since it appears that the expression "dependents" in the Report of the Advisory Commissioner on War Claims, and possibly in some Orders in Council or Regulations based thereon, as well as in certain forms adopted by this Commission, has been translated "ayants droit" in the French version thereof, whereas the said expression should have been translated to read "dépendants", a Commissioner or Deputy Commissioner shall (notwithstanding the aforesaid erroneous translation of the expression "dependents") construe the French version of the said Report, Orders in Council, Regulations and forms as if the word "dependents" had been correctly translated as "dépendants".

Consider-
ation of
Government
Advances.

39. If the Government of Canada has made a partial or interim payment to any person on account of loss of or damage to property or on account of loss from death or personal injuries in respect of which there would be a valid claim on the War Claims Fund, such person may nevertheless claim against the War Claims Fund, and any such claim shall be dealt with as a claim for the full amount to which such person would have been entitled in the absence of any

advance by the Government. In making an award on any such claim, the Commissioner or Deputy Commissioner shall take into consideration any advance made previously by the Government and shall recommend that the amount so advanced, with appropriate interest computation, shall be refunded by deduction from the amount payable to the claimant, such deduction and refund to have full priority over any further payment to the claimant. In any case in which it appears that an advance has been received by the claimant from the Government, the Minister of Finance shall be notified of the hearing of the claim and shall be entitled to be represented thereat. If any person who has received any such advance from the Government declines or neglects to make and prosecute a claim against the War Claims Fund in respect of the amount which has been advanced to him by the Government, the Minister of Finance shall be subrogated to the rights of such person and may present and prosecute a claim against the War Claims Fund in the name of such person as fully and effectually as the person originally entitled might have done.

40. (*Consolidating original Rules 40, 54, and 57*).

*Consolidated
Table of
Priorities.*

In applying priority provisions, the Chief Commissioner shall give effect to the order of priority recommended by the Report of the Advisory Commissioner on War Claims at page 84, as modified by paragraph 4 of the Schedule to Order in Council P.C. 4267, of 9th October 1942, and amendments to that Schedule and, for convenience of reference, may refer to any order of priority by its relevant paragraph number in the following *Consolidated Table of Priorities*:

- (1-2) Claims for compensation for death and personal injury, and for maltreatment, in full, or if the Fund is not sufficient to pay them in full, then *pro rata*.
- (3) (a) Claims for compensation for property losses up to \$2,500.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
 (b) All remaining claims for compensation for property losses up to an additional \$2,500.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (4) (a) All remaining claims for compensation for property losses up to an additional \$5,000.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
 (b) All remaining claims for compensation for property losses up to an additional \$5,000.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (5) All remaining claims for compensation for property losses up to an additional \$15,000.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (6) All remaining claims for compensation for property losses up to an additional \$20,000.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

- (6a) All remaining claims for compensation for property losses up to an additional \$50,000.00 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (7) All remaining claims for compensation for property losses in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

NOTE.—Original Rule 41 is now numbered 17(b). Original Rule 42 is now numbered 26(b). Original Rule 43 is now numbered 26(d). Original Rule 44 is now numbered 29.

Consolidation of claims.

42. Where claims are made for compensation in respect of death, personal injury, or maltreatment of a person now deceased, and it is alleged that such compensation has survived for the benefit of his estate or his dependents or both, so far as may be possible only one hearing shall be conducted in respect of such claims. Any claim or claims filed in such circumstances shall be dealt with as having been brought on behalf of all persons entitled to the surviving compensation and if two or more claims are filed in such circumstances, the Commission shall consolidate them for the purpose of hearing and disposition.

Notice to co-dependents, etc.

43. If, in the course of the processing, hearing or disposition of a claim of the nature mentioned in Rule 42, it appears that a person who has not filed a claim is entitled to share in any surviving compensation that may be awarded, such person shall, if reasonably possible, be notified of the proceedings and given an opportunity to take part therein, unless the time for the giving of notice of claim has expired.

Assignment of share in claim.

44. Any person or persons entitled to share in the surviving compensation in circumstances such as those mentioned in Rule 42 may, by an absolute assignment, transfer his share or interest in such compensation to any other person entitled to share therein, and in such case any award made to the assignee shall include the share or interest so transferred to him.

P.O.W. Claims.

45. (a) Notwithstanding the provisions of Rules of Procedure numbers 6 to 14 inclusive, every claim for maltreatment made by a former prisoner of war in Europe or by his surviving dependent(s) shall be referred in the first instance by the Chief War Claims Commissioner to a Deputy Commissioner for documentary hearing. The Deputy Commissioner shall thereupon proceed to arrive at his recommendation on the basis of findings made in the course of examining documentary materials submitted by the claimant in support of his claim as well as evidence secured from official records or other sources in the course of the processing of the claim for hearing.

Hearing.

Review.

(b) Upon presentation of the Deputy Commissioner's report to the Chief Commissioner for review, in cases falling under this Rule, a copy of such report shall be furnished to the claimant if such copy would be necessary under the provisions of Rules 17 and 20.

(c) The claimant shall thereupon have all rights accorded to him by Rules 21 and 22, and may in addition ask for an oral hearing in Ottawa or regionally.

(d) If an oral hearing is requested and if the Chief Commissioner is of the opinion that the nature of the claim and of the materials submitted or proposed in support thereof warrant an oral hearing, he shall thereupon refer the claim to a Deputy Commissioner for such oral hearing. Otherwise the Chief Commissioner shall proceed to review the report after giving the claimant an opportunity of supplementing his documentary evidence by further written materials.

(e) If, at any stage of the proceedings, it appears to the Chief Commissioner or to the presiding Deputy Commissioner, that the proper disposition of a claim requires the holding of an oral hearing, the Chief Commissioner may direct such oral hearing either at Ottawa or regionally, or the Deputy Commissioner may return the claim to the Chief Commissioner with a recommendation to that effect, as the case may be.

46. If it appears that elimination of a hearing in the first instance by a Deputy Commissioner would expedite the disposition of any claim, and would not involve any disadvantage to the claimant, the claimant may waive his right to such hearing by a Deputy Commissioner, and thereupon the Chief Commissioner may proceed to hear and dispose of such claim in the first instance, either upon documentary or oral evidence or both. The method of reviewing a decision made by the Chief Commissioner in such cases shall be in the discretion of the Chief Commissioner, but the claimant shall have, as nearly as may be possible, the same rights on review as he would have had if the claim had been heard in the first instance before a Deputy Commissioner.

47. *Now numbered 26 (c).*

48. If, in the course of preliminary examination of any claim, or of any Notice of Claim, or in the course of adjudication of any claim, it appears that a material question has arisen or is likely to arise as to the Canadian status of the claimant, or of any person, at any relevant time, the Commission shall communicate with the Department of Citizenship and Immigration. In such communication, the Commission shall outline the facts and allegations relied upon by the claimant in support of a claim to Canadian status, and shall request the Department to:

- (a) corroborate or contradict, from the official records of the Department, the material facts submitted by the claimant;
- (b) indicate any additional facts which may be reasonably available from the Departmental records and which may serve either to supplement or detract from the factual materials furnished by the claimant;
- (c) express, where applicable, the opinion of the Department as to whether the claimant, or any person, at any relevant time, was (or was not) a British subject who had "Canadian domicile" or who had (or had not) been lawfully admitted to Canada for permanent residence;
- (d) make such further comments as may be helpful to the Commission in the adjudication of the claim or in the framing of questions to be determined relative to Canadian status.

Oral
Hearing.

Waiver of
Initial
Hearing:
any claim.

"Canadian
Status";
procedure.

Establish-
ment of
"Canadian
Status".

49. If, as a result of information and opinions conveyed by the reply of the Department of Citizenship and Immigration in response to a communication made pursuant to the next preceding Rule, it appears that the records and opinion of that Department are in agreement with the contention of the claimant that he, or any person, had Canadian status at any relevant time, the fact of such Canadian status may be taken to have been established in the affirmative, and the further processing and adjudication of the claim shall continue on that basis; provided, however, that if the Chief Commissioner is of the opinion that (despite such agreement) the alleged national status has not been properly established, he may so advise the claimant and may proceed to have the question processed and adjudicated by the proper authority.

Proviso.

Procedure
upon
Disagree-
ment on
"Canadian
Status".

50. If, with or without a further exchange of communications between the Commission and the Department (and/or the claimant), it appears that the records and opinion of the Department of Citizenship and Immigration are in disagreement with the contention of the claimant as to the Canadian status of himself, or of any person, the Chief Commissioner:

- (a) if he considers that the records and opinion of the Department of Citizenship and Immigration are conclusive as against the contention of the claimant, shall communicate to the claimant his conclusion to that effect;
- (b) if he considers that, notwithstanding the present records and opinion of the Department, it is open to the claimant to establish, upon a hearing, that he (or any person) was, at any relevant time, a British subject who had "Canadian domicile", or who had been lawfully admitted to Canada for permanent residence, shall communicate with the Director of Immigration as to the propriety of referring such question or questions to a Special Inquiry Officer;
- (c) if, as a result of communications between the Chief Commissioner and the Director of Immigration, it appears proper to refer the question involving "Canadian domicile" or lawful admission to Canada for permanent residence to a Special Inquiry Officer the Chief Commissioner shall request the Director of Immigration to make such reference;
- (d) upon the making of a reference to a Special Inquiry Officer, the Chief Commissioner shall notify the claimant to the effect that such reference has been made, and that the claimant will be duly notified by the Special Inquiry Officer as to the time and place of the holding of the inquiry.

Final
Determi-
nation of
"Canadian
Status".

51. Upon receipt of the decision of a Special Inquiry Officer on any question respecting "Canadian domicile" or respecting "lawful admission to Canada for permanent residence", the Chief Commissioner shall consider such decision as final and conclusive, and as binding upon the claimant and upon the Commission, and shall on that basis proceed to disallow the claim, or to direct its further processing and adjudication, as the circumstances may warrant.

52. Notwithstanding the provisions of the foregoing Rules Nos. 48, 49, 50 and 51, Exceptional procedure.

- (a) the Chief Commissioner may at any stage of the proceedings direct the determination, in the usual way, of any question regarding Canadian status which is within the competence and duty of the Commission to determine; On "Canadian Status".
- (b) in particular, if it appears to the Chief Commissioner that any claim to Canadian status could be more simply and satisfactorily disposed of by a decision as to whether the claimant, or any person, was (or was not) at any relevant time a British subject having a domicile in Canada, he shall, after the due processing of the claim, refer the last mentioned question, either separately or along with the other questions arising upon the claim, to a Deputy Commissioner for hearing and adjudication. On British Subject Having Domicile in Canada.

53. Now numbered 17(c).

54. Now numbered 40(3), (a) and (b).

55. Now numbered 26(c).

56. If an award survives for the benefit of the estate, or of the devisee or legatee, or of the heir or next-of-kin, of a deceased person who, if he were living, would be entitled to claim the award, such claim should be presented by the executor or administrator of the estate of the deceased. The Commissioner or Deputy Commissioner may, however, dispense with the formal administration of the estate and may grant the award directly to the beneficiary or to a trustee for him, on being satisfied: Direct Payment to Beneficiaries in Certain Cases.

- (a) that not less than two years have elapsed since the death of the deceased person;
- (b) that the award is small, and that formal administration of the estate will not reasonably be required for other purposes;
- (c) that no debts or other claims are outstanding which would be entitled to rank against the award;
- (d) that the interests of all persons beneficially entitled to the award have been duly presented and considered.

No precise limit should be fixed under sub-paragraph (b), but it is suggested that an "unadministered" award should not exceed two hundred dollars for each year elapsed since the death of the deceased, and should not exceed one thousand dollars in the aggregate.

57. Now numbered 40(4).

58. Now numbered 28(d).

59. (1) Owing to the imminent completion of the work of the War Claims Commission, the 21st day of August 1959 is fixed as the ultimate date after which no evidence, documents, arguments, or other materials may be received in support of an alleged claim. Final date for sub-missions.

(2) The Chief Commissioner may, in his discretion, exempt from the provision of this Rule any argument tendered in response to a Notice given under Rule 20.

Final
Relaxation
of
Procedure.

60. If it appears necessary in order to complete the disposition of any claim within the time at the disposal of the Commission, the Chief Commissioner may dispense with sending to the claimant any communication, report, or notice (other than a Notice under Rule 20), or may proceed to dispose of any claim on the basis of the documents on file, without the option of an oral hearing, and without reference to a Deputy Commissioner.

(Rules 59 and 60 passed the 15th day of July, 1959).

Note: The initial Rules of Procedure were passed by me on 27th January 1953, were subsequently amended on numerous occasions by supplementary Rules passed in the light of experience, and are now consolidated for reference.

(Sgd.) THANE A. CAMPBELL
Chief War Claims Commissioner

APPENDIX "H"

War Claims Fund

<i>Classification of Claims</i>	<i>No. of Claims Paid at Feb. 29, 1960</i>	<i>Total Payments at Feb. 29, 1960</i>
<i>German</i>		
Armed Forces	6,731	\$ 2,631,072.11
Civilians		
Maltreatment	118	44,338.80
Death	40	326,392.76
Personal Injury	92	107,730.08
Property Loss		
In Full	541	2,158,478.22
Partial	20	796,210.28
<i>Hungarian</i>		
Civilian		
Property Loss	15 net $\frac{1}{3}$ paid from Fund	67,251.67
<i>Italian (payments from War Claims Fund)</i>		
Civilian		
Property Loss		
In Full	62	83,023.13
Partial	1	17,881.58
<i>Japanese</i>		
British Armed Forces	123	209,961.29
Civilians		
Maltreatment	474	560,133.77
Death	19	178,021.82
Personal Injury	54	128,748.36
Property Loss		
In Full	357	1,162,520.67
Partial	1	128,400.87
<i>Hong Kong</i>		
Nominal Roll	1,372	2,780,085.50
Nominal Roll Dependents	38	77,016.00
Deceased List—Dependents	211	178,049.86
Total	10,269	\$ 11,635,325.77

**1966 SUPPLEMENTARY GENERAL REPORT
OF CHIEF WAR CLAIMS COMMISSIONER**

1966 SUPPLEMENTARY GENERAL REPORT OF CHIEF WAR CLAIMS COMMISSIONER

On 4th April 1960 I submitted to the Honourable, the Secretary of State, a General Report of the functioning of the War Claims Commission from the date of its inception on 23rd October 1952 to the date of the General Report. For the next 5½ years the Commission was, in the main, dormant, though in October 1960 an important group of cases was again reviewed, and in the following interval a number of minor reviews and other references were carried out.

The financial statement of the War Claims Fund at 29th February 1960 showed unpaid recommendations of the Commission in the amount of \$3,494,-563.00. Some of those outstanding claims were awaiting information as to the amount of satisfaction which might be available from West Germany, but by far the larger part of the unpaid amounts was made up of nine property awards in excess of \$100,000.00 each, which had to await the application of a further priority No. 7.

Against the remainder of unpaid awards (\$3,494,563.00) the Fund then had a credit on hand amounting to \$2,908,650.00, and a few anticipated further credits. It was therefore expected that the remainder of the nine claims would be paid almost, if not quite, in full. The reviews made in October 1960 added \$525,728.18 and accrued interest to the probable deficiency of the Fund.

Towards the end of the year 1965 it became apparent that the additional credits to the Fund would not only be somewhat larger than had been expected, but would be sufficient to enable payment in full of all recommended awards. The additional credits received since 29th February 1960 result in a revision, as of 30th September 1966, of the total credits to the Fund (from the breakdown shown under Topic (J) of my 1960 General Report) as follows:

Totals to 30 September 1966,

Transferred from the Custodian	\$10,400,000
From other sources (approx.)	5,359,551
Earnings after deposit	1,320,420
	<hr/>
	\$17,079,971

The result is that all approved awards have now been paid in full, with the exception of two small groups totalling approximately \$7,593.93 (including accrued interest) as indicated in Appendix "Supp. H" to this Report.

In addition, it would appear that the War Claims Fund is entitled to a credit for expenses incurred in the administration of claims under the Treaty of Peace with Italy, into which I was directed to inquire by the authority of para. (3) of Order-in-Council P.C. 1952—4354. I conducted that inquiry almost altogether by making use of the personnel and office facilities of the War Claims Commission. I estimate conservatively the additional expenses incurred by the Commission in investigating the Italian Treaty Claims at \$45,000.00,

though a similar inquiry by a separate commission would have cost at least twice that amount. Conversely, the Italian Treaty inquiry furnished the War Claims Commission with a good deal of information on which to base residual awards to the same claimants under the War Claims Rules (see 1960 General Report, Topic (G), para. 1).

There should accordingly be a modest surplus in the War Claims Fund as at 30th September 1966, computed as follows:

"Cash" in Fund	\$381,036.83
Italian Treaty Claims credit	45,000.00
	<hr/>
	\$426,036.83
Less unpaid awards	7,593.93
	<hr/>
Net assets	\$418,442.90

That balance, together with any additional amounts which may be received for the credit of the War Claims Fund, but after deducting any small expenditures which may subsequently be incurred, should (pursuant to the recommendation of the Advisory Commission on War Claims, p. 94) be paid into the Consolidated Revenue Fund, to "compensate Canadians generally" in a very nominal amount "for the huge costs of the war". It is interesting to note that the Right Honourable Advisory Commissioner regarded the probability of a surplus as being extremely remote; on his preliminary survey, he estimated that the property claims would produce awards in the vicinity of \$50,000,000.00, whereas the ultimate awards for property losses were something less than \$9,000,000.00 including interest.

The foregoing discrepancy, however, leads me to comment on the generally high ethical standard of claimants and their advocates in presenting their claims. Only one case (No. 8543) was brought to my attention as an instance of intentional falsification. There were, of course, very numerous cases in which the claimants misunderstood or disapproved the rules which governed the allowance or rejection of claims, or attempted to apply personal rather than objective evaluations of their losses; these are, of course, the factors to which the Advisory Commissioner referred when he commented that many of the property claims, in particular, were exaggerated.

In view of the ultimate payment in full of all approved claims, the orders of priority set up by the War Claims Rules and Regulations, and applied by the Chief Commissioner and the Treasury Board, have become ineffective except as to the order in which the respective classes and amounts of claims were paid. This, however, was in itself a salutary control and the orders of priority would have been indispensable to prevent serious inequities if the Fund had proved inadequate to provide full payment.

Upon the completion of inquiries into individual claims by the Commission, I have been requested to prepare for publication a General Report supplemented by citation of individual cases. It would obviously be neither possible nor valuable to publish all the estimated 25,000 reports made by Deputy Commissioners and the Chief Commissioner. I have therefore selected and edited for publication a number of those reports in individual cases which illustrate the principles and procedure followed by the Commission in processing and adjudicating the various classes of claims.

As many of the individual reports illustrate several different points and procedures, it has not been possible to arrange the cited cases in topical order. They are therefore being arranged in simple numerical order, and the topical references will be provided by a comprehensive and detailed index. The numbering of the cases may seem arbitrary, as it is not related either to the date of presentation or to the completion of adjudication: at a certain stage in the processing of each individual claim or group of claims, the Commission staff assigned a serial case number, which was then retained throughout. Some of the more illustrative cases are being reported in full, whereas many others have been edited by omission of findings of fact and other routine material. Unless otherwise indicated the edited reports are those of the Chief Commissioner.

In the selecting, editing, and arrangement of the cases, as well as in the preparation of the General Report and exhibits, I have been competently assisted by Mr. Robert J. F. Batt as legal adviser, and Miss Muriel Latour as special assistant. Both Mr. Batt and Miss Latour were for several years on the staff of the Commission, and were thoroughly familiar with its proceeding and records.

The process of selecting and editing cases for publication has brought to my mind a number of general comments which may supplement those made in my 1960 General Report.

Discretion

As was anticipated by the learned Advisory Commissioner (Rep. p. 23) the question as to when a claimant should be deemed to have presented his claim for adjudication raised some difficulty. The Rule there laid down was generally equitable in its results, but involved one anomaly, namely that a claimant who became a Canadian citizen, e.g. in 1953, was ineligible if his claim had been presented in 1952, but eligible if it was not presented until 1954. Applying the discretionary power suggested by the Advisory Commissioner, (Rep. pp. 94-95) I regarded the date of presentation of any claim presented or deemed to have been presented before the last date prescribed for presentation, as continuing up to that date.

Conversely, in a number of cases where claimants had not received formal grants of Canadian citizenship until after the last date fixed for presentation, but had been fully qualified for Citizenship before that date, I allowed the formal grants to relate back, in a sort of equity, to the inchoative citizenship established at the earlier dates of full qualification, and I thus accepted claims to eligibility as Canadians at those earlier dates.

Similarly, as the final date for presentation of claims approached, I noticed that practically no claims were being advanced by citizens of the Province of Newfoundland, though the Commission was aware that numerous compensable losses had been suffered by them. The reason doubtless was that eligible claimants did not realize that the Advisory Commission's Report (p. 24) and the Rules based thereon deemed Newfoundland to have been a part of Canada at all times. Owing to the shortness of remaining time available, I arranged that the Government of Newfoundland might file a blanket notice of claim, particularly on behalf of victims of the sinking of the *Caribou*, which was owned by the provincial Government, and that later individual notices might

be related back to the blanket notice. See, e.g., *Case No. 9898*, where the claimants did not give individual notice until May 1956. Also *No. 9887*, unreported.

Another example of the frequent necessity of the exercise of discretion by the Deputy Commissioners and by the Chief Commissioner was in the quantitative assessment of established losses. In any case where the quantum of such loss could not be computed with mathematical accuracy, it was necessary for the Commissioner to place himself in the position of a jury in order to reach a reasonable estimate of the compensable loss.

In one case, *Chan—No. 3168*, it appeared that a part of the damage to certain property had been caused during the Sino-Japanese war, and was therefore not compensable, whereas a part of the damage had been caused by operations of war during World War II. It seemed impossible to obtain evidence which would apportion the damage with any degree of mathematical accuracy. I therefore exercised my discretion by apportioning the cost of repairs to the premises in equal shares as between the two wars, with a resultant award of 50% of the damages against the Canadian War Claims Fund.

Order of Disposition

A review, *a posteriori*, of the functioning of the Commission, raises an interesting question concerning the relative merits of (a) dealing with and paying claims as they individually became ready, as recommended by the Advisory Commission (Rep. p. 94) and (b) an alternative system of reserving decision in groups of cases until all similar cases had been heard and considered. This Commission was normally bound to deal with the claims on system (a), though numbers of obviously related cases were sometimes reserved for consideration as groups. Two examples of a modified application of system (b) resulted in the formula applied to cases where Nazi confiscation or forced sale had preceded subsequent loss by operations of war (1960 General Report, Topic F (4)); and also in my Report on European prisoners of war (*idem*, Topic F(1)). Both these examples were based on consideration by meetings with the Deputy Commissioners (*idem*, Topic C).

Another instance of deferred group consideration resulted in the formula applied to maltreatment claims made by remarried widows of deceased servicemen, e.g., *Re Cleveland No. 1993*.

A few other cases had to be reconsidered as groups, such as, for instance, a number of death claims in which it became evident that, in addition to the losses specifically established, there had been a general dislocation of family finances.

My general Report on prisoners of war in Europe (SK) was necessarily made when only very small samples of the vast volume of detailed evidence had been considered. The shortcomings of *a priori* appraisal at that stage may be illustrated by two outstanding disadvantages: (a) Reserved consideration could have provided a larger number of simplified formulae; this is particularly obvious in the case of "Dieppe" prisoners, who formed the largest single group, and whose claims in most cases could have been equitably settled by more or less uniform lump sum awards and (b) Reserved consideration could have eliminated the recommended minimal award of \$200.00, which later necessitated the application of a somewhat elaborate system of exceptions and pre-

sumptions in order to deal equitably with the unexpectedly large number of claims for aggravated maltreatment in relatively short periods of internment.

On the whole, however, I am of the opinion that uniformity and equity of decision were substantially achieved, and that the possible benefits of adjudication reserved by groups were more than offset by the benefits of decision and payment on each individual claim as soon as possible after it became ready for adjudication.

Administration of Awards

In numerous cases it seemed inadvisable to recommend payment directly to the eligible claimants. Formal administration of an estate was frequently dispensed with in the circumstances mentioned in R.P. 56, or where a deceased claimant was domiciled in a civil law jurisdiction. Some awards were distributed or paid on the basis of agreements among the parties; others by the incidence of provincial law or court decisions. Awards to infants were usually recommended to be paid to trustees or to legal guardians, or to natural guardians in appropriate circumstances. Awards to a small number of veterans or their dependants were paid to officials or branches of the Department of Veterans Affairs, and one to a special account with the Receiver General of Canada,—*Re Badger No. 9950*, unreported, for equitable protection and disbursement. In one case a principal-consuming annuity was purchased to safeguard the needs of the claimant over a period of years. Detailed references to the foregoing, and other, instances may be found under "Administration" in the Index.

Satisfaction Otherwise Provided For

It will be noted that on a very large number of occasions I used the expression "compensation otherwise provided for". That expression was intended to mean exactly the same as the authoritative headline of this topic (1960 General Report, Topic G). The use of the word "compensation" was entirely inadvertent on my part, and in fact I actively tried to avoid it. With deference, however, to the sources of the word "satisfaction", I now consider the word "compensation" to be more appropriate, as it admits the meaning of a partial recompense, whereas "satisfaction" implies a completeness of discharge which is foreign to the context.

I should like to make the following remarks on "Satisfaction Otherwise Provided For" under the sub-headings of Topic G used in my 1960 General Report:

Instance 13.—Contrary to my 1960 recollection, we did receive one claim for loss in *Brunei*. An award was granted, subject to deduction of partial compensation from the Government of Borneo. As this case, *Re Graham No. 1454*, is not otherwise illustrative, it is not being edited.

One claim was presented for loss in French *Indo-China*, *Re St. Redempteur No. 9878*. Compensation was apparently not available to Canadian claimants in that country, and the Commission therefore recommended payment of the established loss in full.

Instance 2.—The reimbursement of the War Claims Fund from funds of Hungarian origin in the hands of the Custodian followed my recommendation of

19th April 1955 that such reimbursement should be on the basis of two-thirds of the total awards made from the Fund for war losses in *Hungary*, inclusive of capital and interest. On 17th June 1960 I made an amended recommendation to the Department of Finance, which is set out as Appendix SUPP. "J", as it shows clearly the basis underlying the additional reimbursement which ensued.

The relation of Hungarian claims to the Fund may therefore be restated as follows:—

War Claims for Losses in Hungary

Total Capital Awards recommended by the War Claims Commission ..	\$150,132.50
Interest on capital	51,622.47
Expenses for establishing claims	560.00
	<hr/>
Total paid from the War Claims Fund	\$202,314.97
Reimbursement made from Hungarian Funds ($\frac{2}{3}$ of the total awards plus interest)	\$134,503.30
Expenses	560.00
	<hr/>
Net Amount paid from the War Claims Fund	\$ 67,251.67
	<hr/>
Total Capital Awards	\$150,132.50
Reimbursement Made	134,503.30
	<hr/>
Additional Reimbursement 1960 ..	\$ 15,629.20

The net result is that the War Claims Fund has paid the Interest and Expense items on Hungarian claims totalling \$52,182.47.

Instance 1.—The last day for applying for payment under the *War Claims (Italy) Settlement Regulations* was later extended to the 30th day of November 1954, under the authority of an amendment to the Regulations passed on 28th July 1960—P.C. 1960-1019. Awards were accordingly made in nine cases which had been previously rejected owing to lateness of applications. The extended period for applying was intended to correspond with that available for claims under the War Claims Rules. Ten other claims which had been rejected for late filing were still too late to take advantage of the extension.

Appendices

An appendix suggested for publication with this Report is the 1952 Report of the Right Honourable James Lorimer Ilsley, P.C., K.C., Advisory Commissioner on War Claims, to which so many references have been made in the individual and general reports of the War Claims Commission. For convenience, the original pagination of the Advisory Report should be retained.

Other Appendices to the present Report are:

March 1960, December 1960, and 1966 General Reports on claims under the Treaty of Peace with Italy (SUPP. E, F, and G);

September 30, 1966 analysis of claims paid from the War Claims Fund (SUPP. H);

1960 Memorandum by Chief Commissioner for reimbursement of Fund for payment of claims for war losses in Hungary (SUPP. J);

General Report on Prisoners of War in Europe, under P.C. 1953-857 (SUPP. K);

Dominion Law Report Headnote in *Laane and Baltser v. The Estonian State Cargo & Passenger Steamship Line*, (1949) 2 D.L.R. 641; S.C.R. 530; distinguished, *Re Lourie—Commission Cases Nos. 9890-1* (SUPP. L);

Canada Law Report Headnote of judgment of the Honourable Mr. Justice Thurlow, in *Whitehead et al v. The Minister of National Revenue*, (1962) Ex. C.R. 69 (SUPP. M); and

Edited Reports of cases before the Commission (SUPP. N).

Dated this 22nd day of November A.D. 1966.

(Sgd.) THANE A. CAMPBELL
Chief War Claims Commissioner.

To the Honourable,
The Registrar General of Canada,
Ottawa.

Appendix "SUPP. A"

**REPORT OF THE
ADVISORY COMMISSION**

WAR CLAIMS

REPORT

OF THE

ADVISORY COMMISSION

FEBRUARY 25, 1952

Edmond Cloutier, C.M.G., O.A., D.S.P.
Queen's Printer and Controller of Stationery
Ottawa, 1954

Report

To His Excellency the Governor General in Council,

MAY IT PLEASE YOUR EXCELLENCY:

I have the honour to submit the following report pursuant to the Commission issued to me dated July 31st, 1951, a copy of which and the Order in Council upon which it is founded are attached.

All of which is respectfully submitted for Your Excellency's consideration.

(Sgd) J. L. ILSLEY,
Commissioner.

OTTAWA, February 25, 1952.

Commission

P. KERWIN
Administrator

[L.S.]

C A N A D A

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith.

To ALL To WHOM these Presents shall come or whom the same may in anywise concern,—GREETING:

F. P. VARCOE DEPUTY ATTORNEY GENERAL, CANADA.	}	WHEREAS arising out of World War II, many claims have been asserted by Cana- dians, hereinafter referred to as War Claims,
---	---	--

in respect of death, personal injury, maltreatment, and loss of or damage to property.

AND WHEREAS in respect of some of these claims partial compensation is provided for and may be obtained under treaties of peace or other international instruments, but that in respect of the bulk of them, no provision for compensation has been made.

AND WHEREAS such War Claims are matters connected with the public business of Canada and it is deemed advisable now to appoint a Commissioner to inquire into and report to Our Governor in Council concerning such Claims.

AND WHEREAS it is expedient and Our Governor in Council has, by Order, P.C. 3951, of the thirty-first day of July, in the year of Our Lord one thousand nine hundred and fifty-one (copy of which is hereto annexed) authorized the appointment under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes of Canada, 1927, of Our Commissioner therein and hereinafter named to inquire into and report upon the aforesaid matters, and without limiting the generality of the above terms of reference, in particular, make recommendations as to the following matters:

(a) An estimate or calculation as to the amount of the total funds available for the payment of such claims;

(b) The classification of War Claims and an estimate of the number of each class and of the total amount of such claims;

(c) As to (i) which class or classes of claims should be admitted for payment in full and (ii) which, if any, in part only, and (iii) which, if any, should be rejected;

(d) The classification of claimants whose claims should be admitted;

(e) The priorities, if any, that should be established for payment of (i) classes of claims and (ii) classes of claimants;

(f) The limitation of time that should be prescribed within which War Claims shall be filed;

(g) The maximum sum of compensation, if any, that should be prescribed in relation to any class of War Claims or claimants;

(h) The nationality or domicile at time of loss and/or at the time of filing the claim of claimants entitled to compensation;

(i) The method to be adopted for determining loss in case of each class of War Claims;

(j) Whether interest should in any cases be allowed; and

(k) The tribunal or tribunals that should be authorized to adjudicate upon individual claims and the rules of procedure and evidence to be adopted by such tribunals.

NOW KNOW YE that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the RIGHT HONOURABLE JAMES LORIMER ILSLEY, P.C., K.C., Chief Justice of Nova Scotia, to be Our Commissioner to hold and conduct such inquiry.

TO HAVE, HOLD, EXERCISE AND ENJOY the said office, place and trust unto the said James Lorimer Ilsley, together with the rights, powers, privileges and emoluments unto the said office, place and trust of right and by law appertaining, and as are more particularly set out in the said Order in Council, during Our pleasure.

AND WE Do hereby authorize Our said Commissioner to engage the services of counsel, technical advisers or other experts, clerks or reporters as he may deem necessary or advisable.

AND WE Do hereby require and direct Our said Commissioner to report to Our Governor in Council the result of his investigations, together with the evidence taken before him and any recommendations which he may see fit to make in the circumstances.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. WITNESS: Our Right Trusty and Well-beloved Counsellor the Honourable Patrick Kerwin, Puisne Judge of the Supreme Court of Canada and Administrator of the Government of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this Thirty-first day of July in the year of Our Lord One thousand nine hundred and fifty-one and in the Fifteenth year of Our Reign.

By Command,

W. P. J. O'MEARA,
Acting Under Secretary of State.

Order in Council

P.C. 3951 of July 31, 1951

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Administrator on the 31st July, 1951.

The Committee of the Privy Council have had before them a report dated July 27, 1951, from the Secretary of State, representing:

That, arising out of World War II, many claims have been asserted by Canadians, hereinafter referred to as War Claims, in respect of death, personal injury, maltreatment, and loss of or damage to property:

That in respect of some of these claims partial compensation is provided for and may be obtained under treaties of peace or other international instruments, but that in respect of the bulk of them, no provision for compensation has been made; and

That such War Claims are matters connected with the public business of Canada and it is deemed advisable now to appoint a Commissioner under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes, 1927, to inquire into and report to the Governor in Council.

The Committee, therefore, on the recommendation of the Secretary of State, advise:

1. That under and in pursuance of the Inquiries Act a Commission do issue appointing the Right Honourable James Lorimer Ilsley, P.C., K.C., to be a Commissioner to inquire into and to report upon the aforesaid matters;

2. That, without restricting the generality of the above terms of reference, the Commissioner shall, in particular, make recommendations as to the following matters:

(a) An estimate or calculation as to the amount of the total funds available for the payment of such claims;

(b) The classification of War Claims and an estimate of the number of each class and of the total amount of such claims;

(c) As to (i) which class or classes of claims should be admitted for payment in full and (ii) which, if any, in part only, and (iii) which, if any, should be rejected;

(d) The classification of claimants whose claims should be admitted;

(e) The priorities, if any, that should be established for payment of (i) classes of claims and (ii) classes of claimants;

(f) The limitation of time that should be prescribed within which War Claims shall be filed;

(g) The maximum sum of compensation, if any, that should be prescribed in relation to any class of War Claims or claimants;

(h) The nationality or domicile at time of loss and/or at the time of filing the claim of claimants entitled to compensation;

(i) The method to be adopted for determining loss in case of each class of War Claims;

(j) Whether interest should in any cases be allowed; and

(k) The tribunal or tribunals that should be authorized to adjudicate upon individual claims and the rules of procedure and evidence to be adopted by such tribunals.

3. That the Commissioner be authorized to engage the services of counsel, technical advisers or other experts, clerks or reporters as he may deem necessary or advisable, at rates of compensation to be approved by the Governor in Council.

4. That the Commissioner be paid travelling and living allowances while absent from his place of residence, for which accounts shall be submitted.

N. A. ROBERTSON,
Clerk of the Privy Council.

Table of Contents

	Page
INTRODUCTION	1
WAR CLAIMS FUND.....	4
INSTANCES OF SATISFACTION OTHERWISE PROVIDED FOR.....	10
POOLING	17
CLAIMS "ARISING OUT OF WORLD WAR II".....	18
CLAIMS "BY CANADIANS".....	21
CLAIMS IN RESPECT OF DEATH AND PERSONAL INJURY.....	29
MALTREATMENT	39
CLAIMS FOR PROPERTY LOSSES.....	56
VALUATION OF CLAIMS FOR PROPERTY LOSSES.....	72
CLASSIFICATION OF WAR CLAIMS.....	83
PRIORITIES	84
INTEREST	88
LIMITATION OF TIME FOR FILING CLAIMS.....	90
WAR CLAIMS TRIBUNALS.....	91
ORDER IN WHICH CLAIMS SHOULD BE DEALT WITH AND PAID.....	94
DISPOSITION OF SURPLUS.....	94
DISCRETIONARY POWERS.....	94
LEGISLATION AND ORDERS IN COUNCIL.....	95
ACKNOWLEDGMENT AND CONCLUSION.....	95
SCHEDULE A: RATES OF EXCHANGE (December 30, 1949).....	96
SCHEDULE B: RATES OF EXCHANGE (June 30, 1939).....	98
SCHEDULE C: RATES OF EXCHANGE (June 30, 1941).....	99

REPORT

Introduction

As an introduction to this report something should be said as to the sources of the information and the nature of the investigation on which the report is based. In this connection a brief review of the course of events relating to the submission of war claims before, during and since the war is first necessary.

The fourth and last Reparations Commission in Canada charged with the handling of claims arising out of World War I made its final report in March, 1933. Some four years later war claims again became a matter for government consideration as a result of hostilities in China. Numerous claims were asserted by Canadians, most of them for compensation for loss of or damage to property, and some of these claims became the subject of diplomatic representations. Many of these claims are still outstanding and the Treaty of Peace with Japan makes certain provisions in respect of them.

On the outbreak of World War II, reparations and war claims became a question which concerned the Canadian Government owing to the sinking off the coast of Ireland of the S.S. *Athenia* on September 3, 1939, as a result of which many Canadian passengers lost personal property, sustained personal injuries, or lost their lives. From then on, throughout the whole period of the war and up to the present time, several thousand claimants have submitted claims to the Department of External Affairs, the Custodian of Enemy Property, the Department of Finance or the Department of Justice. There have, of course, been large numbers of claims of the classes administered by the Department of Veterans' Affairs but these claims, which are compensated by pensions for disability or death of members of the armed services, are not considered to come within the scope of the inquiry.

In September, 1945, an Interdepartmental Committee on Reparations was established by Cabinet decision to advise and make recommendations to Cabinet on all matters pertaining to reparations. In December, 1945, the Final Act of the Paris Conference on Reparation (to be referred to later) was signed and in 1947 peace treaties were concluded with Italy, Hungary, Roumania and Finland. During these years the question of the handling of war claims was under constant review by the Interdepartmental Committee on Reparations, but the Committee was not in a position to recommend any effective action on claims because of the uncertainty which necessarily existed as to the extent of assets formerly belonging to enemy countries, whether treaties had been concluded with them or not, or their nationals, which would become available for the purpose of satisfying claims. During this period there were no treaties in existence with either Germany or Japan and even yet there is no treaty with Germany. It has not been possible until very recently to make even an approximate estimate of the amount of assets of enemy origin which may be available for satisfaction of war claims. Although it was not possible in 1947 or 1948 to promise any immediate action, the Secretary of State was in 1948 authorized by Cabinet, *inter alia*, to ascertain the claims of persons residing or carrying on business in Canada, or of Canadian citizens residing outside of Canada, for loss or damage arising directly from operations of war, including claims the partial or full settlement of which was provided for under the peace treaties, or agreements with or legislation of certain countries. In September, 1948, a War Claims

Branch was set up by the Secretary of State to undertake this work. In November, 1948, a notice was published in all the daily English and French newspapers in Canada, numbering approximately one hundred, as well as in Canadian periodicals of Croatian, German, Hungarian, Lithuanian, Norwegian, Polish, Slovak, Ukrainian and Yiddish languages, and in the *Canada Gazette*, stating that claims for loss or damage arising directly from operations of war during the Second World War might be filed with the Department of the Secretary of State of Canada, War Claims Branch, Custodian's Office, Ottawa, on or before January 31, 1949, by any person who was a resident in or carrying on business in Canada or who was a Canadian citizen residing outside of Canada, and giving directions as to the particulars to be included in the claims. Following the publication of this notice more claims were submitted.

For several reasons, it took the War Claims Branch a considerable time to tabulate the claims received both before and after this notice was published. As indicated above, war claims had been filed with several government departments and agencies. In order to collect and analyse these claims it proved necessary to examine thousands of files, and write thousands of letters, and in many cases to make enquiries from missions abroad. Further enquiries had to be made in many cases to check up on the national status of claimants at time of loss and on many other items of information. Again, it was considered that estimates of losses should be shown in Canadian dollars. This presented difficult problems since war claims, as filed, had been made in about 30 currencies, some of which had disappeared as a result of monetary reforms or extreme depreciation. Then in some cases it was difficult to ascertain whether the claimant was claiming in pre-war or post-war terms of the currency in which he claimed. Another obstacle to the speedy analysis of the war claims filed was the difficulty or impossibility of obtaining information about property left behind or lost in countries which had come under Communist control. Nevertheless, estimates of losses were finally produced, which will be referred to later.

It is not possible, or necessary, to describe precisely all the classes of claims asserted by civilian Canadians for injury and losses arising from the war but some of the main classes should be mentioned. There are claims for compensation for personal injuries or death caused by operations of war on the high seas or by maltreatment in internment. There are claims for compensation for maltreatment itself, irrespective of whether disability or death resulted. There are claims for loss of or damage to various types of property, tangible or intangible, and for losses of profits, as a result of war operations. There are claims for losses of property from looting. Claims have also been made for losses arising as a result of orders issued during the war by Canadian or Allied Governments and for losses caused by measures for nationalization, land reform and redistribution of property, mainly in Communist countries. In addition to claims by civilians, claims have been asserted by veterans for compensation for maltreatment while interned in the Far East.

This brief review of events pertaining to the submission of war claims indicates the sources of the information on which this report is based. The files have all been made available to me containing as they do, among other things, the claims, the material submitted as supporting the claims, and the correspondence eliciting further information, and I have examined not all but many of these files and in considerable detail.

In addition I have had before me the reports of the decisions of the Commissioners appointed by the Canadian Government after World War 1 to adjudicate war claims made under the Treaty of Versailles. There were four of these Commissioners who sat successively and the decisions of the last three Commissioners in individual cases are available, as well as reports of opinions delivered as applicable to classes of claims. These have been considered.

Then too, much helpful information has been obtained from foreign sources. Other countries have had to deal with war claims both after World War I and World War II. The decisions of tribunals appointed by foreign governments, the legislation of foreign countries and the reports of commissions abroad, dealing with war claims, have as far as possible been examined.

Recourse has also been had to works on international law, including specialized studies, especially those dealing with such subjects as diplomatic protection of citizens abroad, the law and procedure of international tribunals, and damages in international law, as well as to standard texts and court decisions dealing with municipal law. I have also felt free to be guided by information as to facts, circumstances and conditions abroad gleaned from published material which I have regarded as undoubtedly reliable.

I have, however, not invited representations or held hearings. On occasion the War Claims Branch has been asked to obtain additional facts bearing on a claim or class of claims and in a few instances I have received from claimants additional information directly. My reasons for concluding that it was not necessary or desirable to hold hearings or invite representations were as follows:

(1) The terms of reference do not call for adjudication of particular claims. They call for recommendations as to which class or classes of claims should be recognized for payment of compensation and to what extent, and on the various questions which arise in the framing of a general scheme for dealing with claims, as, for example, the total funds available for payment, the way in which various classes of claims should be dealt with, and the tribunals, if any, that should be established to deal with them. The steps that had already been taken and the extensive information already available were such that for these purposes no hearings or further representations were necessary. The material already available is so extensive that there is no real danger of the interests of any class of claimants being overlooked.

(2) To be effective any representations would have to be addressed to this question: Having regard to the possible sources of payment, how should the various classes of war claims be dealt with? Individual claimants could not be expected to be able to present an overall scheme for consideration. To do so it would be necessary to take into consideration all the classes of claimants and their conflicting interests. Information for this purpose is not available to individual claimants.

(3) To hold hearings and invite representations would result in delay in completion of the report, in expense to those making representations, and in a feeling on the part of those who could not afford this expense that they were being discriminated against. If there were any advantage to claimants in having an opportunity to make representations at this stage it would be so slight and theoretical that it would be outweighed by the counterbalancing factors of delay and expense.

(4) The only practical way of ensuring informed representations would be to advise the known claimants of all the issues affecting their claims arising in the consideration of a general scheme. This would involve publication of a draft report with an invitation to make representations. As, however, I am required only to make recommendations, this opportunity will be afforded to claimants in any event. To invite representations in a draft report would entail a delay in the completion of the final report of such unpredictable duration that such a step would not be justified.

War Claims Fund

The terms of reference require a report in detail on a number of matters relating to war claims, which, in effect, are defined as claims arising out of World War II asserted by Canadians in respect of death, personal injury, maltreatment and loss of or damage to property. The first of these matters is "An estimate or calculation as to the amount of the total funds available for the payment of such claims". I consider my inquiry in this respect to be limited to ascertaining, and estimating the total of, the funds that from their origin should be considered to be appropriate to meeting war claims. Obviously the total funds available to meet war claims might include sums voted by Parliament for that purpose. It is assumed, however, that in directing an inquiry as to funds available for payment of war claims the Government intended that the inquiry be confined to funds which from past practice or under international agreement may be treated as destined for the payment of such claims. Such funds would include certain of those received or to be received by the Government of Canada under treaties of peace for distribution among certain claimants—funds whose distribution is, in effect, controlled by these treaties. Apart from the fact that an estimate of these funds with any approximation to accuracy is in some cases impossible the practical utility of grouping these funds with what may be called free funds—those which can appropriately be paid into a War Claims Fund as below envisaged—is not apparent. A claimant is interested in obtaining payment of his claim. Whether he receives compensation out of controlled funds or directly from foreign sources or out of free funds pooled in a War Claims Fund makes little difference to him, but under the terms of reference he is entitled to an estimate of how much that War Claims Fund will likely amount to and a recommendation as to what his right to prove against that War Claims Fund will be, having regard to any satisfaction of his claim otherwise provided for. As will be seen, my recommendation will be that if he is an eligible claimant and has an admissible claim he will be entitled to prove against a War Claims Fund but to be paid only to the extent that satisfaction of his claim is not otherwise provided for.

I shall now describe the two sources of moneys which I consider to be appropriate for the War Claims Fund and discuss the question of estimating the amounts which will be available to it. In the immediately following section of the report I shall refer to the instances of satisfaction otherwise provided for.

The principal source arises from the Final Act of the Paris Conference on Reparation from Germany. This Act, which is often referred to as the Paris Agreement on German Reparation or the Paris Agreement, was signed in Paris in December, 1945, by certain of the governments of the countries, including Canada, which had participated in the war against Germany. It provided for the establishment in Brussels of the Inter-Allied Reparation Agency (IARA) which has an Assembly and an international secretariat. Eighteen governments became members of the IARA, and another government, Pakistan, has since become a member. The function of the Agency is to allocate German reparation among the member governments in accordance with the provisions of the Paris Agreement. The chief forms of reparation made available are industrial capital equipment, German external assets, merchant shipping, captured enemy supplies and Russian reciprocal deliveries which consisted of foodstuffs and raw materials which the U.S.S.R. had undertaken to deliver in return for industrial equipment and other materials received from the Western Zones of Germany.

Under the Potsdam Agreement which was the forerunner of the Paris Agreement it had been agreed that the U.S.S.R. should receive as reparations the German external assets in Bulgaria, Hungary, Roumania, Finland and Eastern Austria as well as reparation removals from the Eastern Zone and

certain proportions of these removals from the Western Zones. The U.S.S.R. undertook to settle the reparation claim of Poland from its own share of reparations. The other Allied Powers were to receive the other available external assets as well as the reparation removals from the Western Zones. The U.S.S.R. and Poland, therefore, did not participate in the Paris Agreement and are not members of the Agency.

Under the Paris Agreement, German reparation was divided into two Categories, A and B. German external assets within the jurisdiction of the members of the Agency as well as of certain neutral and ex-enemy countries comprised the major portion of Category A, which also included all other forms of German reparation except those included in Category B. This second Category included the industrial and other capital equipment removed from Germany, merchant ships, and inland water transport.

During the Conference which preceded the Paris Agreement the percentage entitlement of each member government had first been determined on the basis of the material damage its economy suffered, the loss of human life incurred and the contribution of that government to the war effort. After the original calculations had been made, certain member governments, including Canada, voluntarily renounced a proportion of their rights to industrial capital equipment to the advantage of other member governments among whom the renounced entitlement was divided *pro rata*. This gave rise to a different set of percentages in the two categories, with Canada having the normal entitlement of 3.5 per cent in Category A against 1.5 per cent in Category B.

It was recognized at the Conference that through allocation difficulties it would be impossible to keep the receipts balanced and that certain countries would immediately have more than their share of Category A reparation as a result of the presence of a large amount of German external assets within their own jurisdictions. In order to give each member its allotted shares of both categories of reparation it was provided that excess receipts of one type of asset would be compensated by a smaller entitlement to other types within the same category, and also that in the case of an excess of assets within the jurisdiction of the member government the excess charge could be transferred to Category B with a corresponding reduction in that country's entitlements there. Countries such as Canada which had renounced part of their normal Category B share were, however, given in exchange the right to charge any excess of these assets within their jurisdiction up to the value of what they had renounced against a free account which would be a charge against neither A nor B.

Article 2 of the Agreement provides for the settlement of claims against Germany in the following terms:

"The Signatory Governments agree among themselves that their respective shares of reparation, as determined by the present Agreement, shall be regarded by each of them as covering all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature, arising out of the war (which are not otherwise provided for), including costs of German occupation, credits acquired during occupation on clearing accounts and claims against the Reichskreditkassen."

Article 2 then, however, goes on to provide that this is without prejudice to the determination at the proper time of the forms, duration or total amount of reparation to be made by Germany, the right which each signatory government may have with respect to the final settlement of German reparation, and any political, territorial or other demands which any signatory government

may put forward with respect to the peace settlement with Germany. Article 2 further provides that the Agreement shall not be considered as affecting:

"the obligation of the appropriate authorities in Germany to secure at a future date the discharge of claims against Germany and German nationals arising out of contracts and other obligations entered into, and rights acquired, before the existence of a state of war between Germany and the Signatory Government concerned or before the occupation of its territory by Germany, whichever was earlier."

Article 6 which deals with German external assets is of particular importance as it is Canada's chief source of reparation. It states, *inter alia*, that each signatory government shall, under such procedure as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control and *shall charge against its reparation share such assets* (net of accrued taxes, liens, expenses of administration, other *in rem* charges against specific items and legitimate contract claims against the German former owners of such assets). German assets in those countries which remained neutral in the war against Germany are to be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by these countries, the net proceeds of liquidation or disposition to be made available to the Inter-Allied Reparation Agency for distribution on reparation account. Under the Rules of Accounting for German External Assets held within the jurisdiction of member governments, approved by the Assembly on November 21, 1947, the items which are to be included or excluded as charges to the signatories against their respective shares of German assets are specifically set forth.

The German enemy assets within the jurisdiction of the Canadian Government are vested in the Custodian of Enemy Property. The total value of the assets in the Custodian's hands recorded as German enemy assets, together with the estimated interest subsequently earned on the proceeds of those that have been liquidated, is approximately \$5,903,938.20, made up as follows:

German Enemy Assets

Total amount of enemy assets recorded as German and held by the Custodian as of December 31, 1951, including revenue received by the Custodian before liquidation (this includes unliquidated assets having an estimated value of \$450,638.24 the rest having been liquidated)	\$ 4,963,926.03
Estimated interest on proceeds of liquidation to December 31, 1951	1,060,500.70
(These proceeds were invested in Dominion of Canada bonds from time to time, the balance not so invested consisting of bank deposits)	
Less	6,024,426.73
2 per cent Commission (Regulation 44 of the Revised Regulations made under the Trading with the Enemy (Transitional Powers) Act provides that "the Custodian may, in addition to other charges authorized by these regulations, if any, charge against all property investigated, controlled or administered by him, whether the property is vested in him or not, a fee for services rendered not exceeding 2 per cent of the value of the property including the income therefrom.")	120,488.53
Balance	\$ 5,903,938.20

This amount, however, is subject to adjustment by reason of the following:

- (i) The possibility of payments of *in rem* charges against specific items and/or legitimate contract claims against the German former owners of such assets.
- (ii) Receipt of income on revenue producing assets.
- (iii) Inter-custodial transfers of assets both to and from the Canadian Custodian under an agreement relating to inter-custodial disputes known as the "Agreement Relating to the Resolution of Conflicting Claims to German Enemy Assets," signed at Brussels in December, 1947, or under any other inter-custodial agreement.
- (iv) Clarification of the status of certain assets which would result in releases to successful applicants or additions to this total in respect of some assets whose German ownership is now very doubtful.

In addition, assets have been allocated to Canada by IARA under the Paris Agreement. Under Category A the Canadian Government had received slightly more than \$1,017,000 from allocations made by IARA up to December 31, 1951, in respect of its share of German external assets in neutral and ex-enemy countries as well as of neutral currencies removed from Germany. These are, as just indicated, in addition to those German external assets within the jurisdiction of the Canadian Government and vested in the Custodian over which IARA has no effective control. There were as of December 31, 1951, additional credits allocated in foreign currencies to Canada but not converted into Canadian dollars, equivalent to \$250,000.

Net receipts under Category B arising from the sale of merchant ships and industrial equipment which have been allocated to Canada had amounted to some \$713,000 by the same date, while a further \$217,000 was due under the mortgage agreements made when the ships were sold.

These receipts plus the value of the German assets vested in the Canadian Custodian represent considerably less than the shares which Canada was awarded in these Categories under the Paris Agreement. This underdraft position is basically due to the fact that IARA has, as it turns out, had no control up to the end of 1951 over the distribution of some 96.75 per cent of Category A assets, the major part of which consisted of German external assets within the jurisdiction of member governments. Certain of these governments held far more than their nominal share of this type of asset and the balance of 3.25 per cent within IARA's control has only slightly reduced the resulting underdrafts. When the Paris Agreement was drawn up it had been anticipated that the reparations pool over which IARA had control would have represented a larger proportion than this and been enough to give all countries their nominal share in Category A.

In Category B IARA had complete control of the allocations of merchant shipping and industrial equipment but each country's share of the latter was determined as well by the interest shown in making bids for the equipment which became available. Although Canada received practically her full entitlement of merchant shipping, Canadian industry for various reasons showed little real interest in acquiring industrial equipment and consequently a large underdraft has arisen here too.

Although Category B allocations are now completed, as far as Canada is concerned, and therefore provide no source of funds beyond those already mentioned, there may still be considerable sums to be allocated under Category A. The method of distribution now approved by IARA for future allocations is a complicated one but has been designed to reduce the underdrafts as far as

possible. Since the total still to be allocated is by no means certain, it is not possible to give a reasonable estimate as to what additional sums Canada may yet receive from this source. However, as a result of Canada's underdrawn position the effect of the provisions of the Paris Agreement outlined above is that the proceeds of the liquidation of all the German enemy assets vested in the Custodian, with such additions thereto and deductions therefrom as result from the application of the foregoing adjustment factors, may without doubt be retained by Canada.

As already indicated, under Article 2 of the Paris Agreement these proceeds as well as the proceeds from the liquidation of assets allocated and to be allocated by IARA to Canada are to cover those claims of Canada and its nationals against the former German Government and its agencies arising out of the war which are not otherwise provided for. I therefore consider it appropriate that such proceeds should be transferred to the War Claims Fund.

To summarize then, there is at present the possibility of receiving from this source \$8,093,938.20 comprising \$5,903,938.20 from assets held by the Custodian, \$1,260,000 from other assets in Category A and \$930,000 in Category B. Of these amounts I am satisfied that \$5,000,000, \$1,017,000, and \$713,000 respectively are immediately available for the purposes of a War Claims Fund.

The second source of funds which I consider to be appropriate is provided by the Treaty of Peace with Japan. Under Article 14 of this treaty the Canadian Government has the right to seize, retain, liquidate or otherwise dispose of all property of Japanese origin in Canada with very minor exceptions such as diplomatic or consular property. The treaty, signed in September, 1951, at San Francisco, has not yet received the ratifications of Allied Governments necessary to make it binding. However, there can be little question that it would now be justifiable to proceed on the assumption that the assets of Japanese origin and the proceeds thereof, where liquidated, now in the hands of the Canadian Government and its agencies will be available for such purposes as the Government thinks fit. It is obvious that an appropriate use for such assets and their proceeds would be the satisfaction of war claims.

Reference is made in Article 15 (a) of the treaty to the Allied Powers Property Compensation Law which has been passed by the legislative authorities in Japan but does not come into force until the treaty with Japan itself comes into force. Under this law funds may be made available in Japan for the direct satisfaction of some war claims for losses of property in Japan. These funds, therefore, will not be available for payment into the War Claims Fund and will be considered later as one of the instances of satisfaction otherwise provided for. It should be mentioned that under Article 16 of the treaty, it is provided that Japan will transfer its assets and those of its nationals with certain minor exceptions in countries which were neutral during the war or which were at war with any of the Allied Powers or, at its option, the equivalent of such assets, to the International Committee of the Red Cross which shall liquidate such assets and distribute the resultant fund to the appropriate national agencies for the benefit of former prisoners of war and their families on such basis as it may determine to be equitable. It follows that these assets and the resultant fund cannot be made available for the War Claims Fund. Article 18 of the treaty contains provisions respecting the means of settlement of pre-war debts quite apart from Article 14. These observations are, of course, all dependent on the ultimate ratification of the Japanese peace treaty.

Thus the assets of Japanese origin seized in Canada which are also vested in the Custodian of Enemy Property are the only appropriate source of supply for the War Claims Fund under this treaty. The total net value of the assets in the Custodian's hands recorded as Japanese, together with the estimated

interest subsequently earned on the proceeds of those that have been liquidated, is approximately \$3,800,679.23, made up as follows:

Japanese Enemy Assets

Total amount of enemy assets recorded as Japanese and held by the Custodian as of December 31, 1951, including revenue received by the Custodian before liquidation (this includes unliquidated assets having an estimated value of \$270,786.88 the rest having been liquidated).	\$3,445,301.32
Estimated interest on proceeds of liquidation to December 31, 1951	432,942.79
	<hr/>
	3,878,244.11

(These proceeds were invested in Dominion of Canada bonds from time to time, the balance not so invested consisting of bank deposits)

Less

2 per cent Commission	77,564.88
	<hr/>
Balance	\$3,800,679.23

These figures are also subject to some of the fluctuation factors mentioned in the case of the German enemy assets but I am satisfied that \$3,000,000 of these are immediately available for the purpose of transfer to a War Claims Fund.

My recommendation is that the funds to be made available for a War Claims Fund be:

(a) All reparations, including any income earned thereon, made available to Canada under the Paris Agreement less (i) any payments of *in rem* charges against specific items and legitimate contract claims against the German former owners of such assets which may have been or may be made, and (ii) administrative charges and expenses.

(b) All assets, including any income earned thereon, that are to be made available to Canada under Article 14 of the Treaty of Peace with Japan less (i) any payments of *in rem* charges against specific items and legitimate contract claims against the Japanese former owners of such assets which may have been or may be made, and (ii) administrative charges and expenses.

Such reparations and assets should be transferred, after liquidation where necessary, to an account to be established in the Consolidated Revenue Fund to be known as the War Claims Fund, and should be available for the satisfaction of admissible war claims subject to the priorities suggested below, to the extent of the Fund but only if, and to the extent that, satisfaction is not otherwise provided for. Where assets have already been liquidated and the proceeds thereof invested in securities, these should be transferred to the Receiver General to be held for the purposes of the War Claims Fund.

The explanation given above of the two sources of moneys which I am recommending for the War Claims Fund fully points out the fact that the amount which will finally be available cannot by any means be determined now. This fact, however, should not prevent or delay the establishment of the Fund. After due consideration of the various factors involved, including particularly the adjustment factors relating to the assets held by the Custodian, I further recommend:

(a) that the War Claims Fund be established and that there be transferred into it immediately:

(1) \$5,000,000 in Dominion of Canada bonds by the Custodian in respect of German enemy assets vested in him;

- (2) \$3,000,000 consisting of \$2,680,000 in Dominion of Canada bonds and \$320,000 in cash by the Custodian in respect of Japanese enemy assets vested in him; and
 - (3) the proceeds of the liquidation of any other German enemy assets already received by the Government of Canada through IARA.
- (b) that the Custodian transfer at the end of each calendar year beginning with the year 1952 such additional proceeds of the liquidation of German and Japanese assets as the Government considers may be transferred; and
- (c) that additional proceeds of liquidation of German assets received through IARA be paid into the Fund from time to time as they become available.

In this way a Fund of approximately \$9,730,000 would be immediately available.

Instances of Satisfaction Otherwise Provided For

In some cases arrangements have been made by the Canadian Government or by foreign agencies permitting a Canadian claimant to recover compensation for his war losses. In nearly all cases these arrangements apply only to loss of or damage to property; in most cases only limited compensation is recoverable; and in two cases the recovery of even limited compensation has become unenforceable. Mainly these arrangements have been made in treaties of peace with ex-enemy countries, or in what are termed equal treatment agreements on war damage compensation concluded with Allied countries, or by foreign governments through the agency of War Damage Commissions. Each one of these instances of satisfaction otherwise provided for deserves special mention. In passing it may here be noted that Canada and Bulgaria were not at war with one another, so Canada was not a signatory to the Treaty of Peace with Bulgaria, that with Germany it has been impossible to conclude a treaty of peace, and that several countries, such as Greece, Poland and Indonesia, have been unable to make effective provisions for war damage compensation for their own nationals let alone for foreigners. Some cases have come to light where Canadians are barred from recovery for war damage compensation owing to lack of residence qualifications.

1. Italy

The main claims provisions of interest to Canadians are to be found in Article 78 of the Treaty of Peace with Italy. In order to qualify for compensation a claimant must be a United Nations national as defined in paragraph 9(a), that is to say he must have been a national of one of the United Nations both on September 3, 1943, which was the date of the armistice, and on September 15, 1947, which was the date of the ratification of the treaty, or he must have been treated as enemy under the laws in force in Italy during the war. The term "United Nations nationals" includes not only individuals, but also corporations or associations organized under the laws of any of the United Nations. Owner, as defined, includes a successor to the owner, provided the successor was also a United Nations national. A transferor of property retains his right to compensation without prejudice to obligations between the transferor and the purchaser under domestic law. Property is very widely defined. Shareholder claims by United Nations nationals in respect of damage to Italian war-damaged corporations or associations are expressly permitted, even although the holding is indirect and a minority one.

Provision is made for the restoration to the claimant of property in Italy and, where it cannot be returned, or where the claimant, as a result of the war, has suffered a loss by reason of injury or damage to property in Italy, for compensation by the Italian Government in lire to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. Thus the claimant is safeguarded against loss in the purchasing power of the lira. Compensation is not to be subject to any form of levy or taxation, but is subject to foreign exchange control. Compensation may also be claimed in respect of loss or damage due to special measures applied to the property of a United Nations national during the war and which were not applicable to Italian property. All reasonable expenses incurred in Italy in establishing claims, including the assessment of loss or damage, are to be borne by the Italian Government. Another important provision makes these compensation provisions the liability of the Italian Government, where the loss or damage was sustained in ceded territory or in the Free Territory of Trieste. The settlement of disputes arising out of Article 78 is dealt with in Article 83, which provides for reference to a Conciliation Commission.

On September 20, 1951, the Canadian and Italian Governments made an agreement, which has still to be ratified by the Italian Parliament, concerning claims under Article 78, Canadian pre-war debt claims and seized Italian property in Canada. Under this agreement provision is made for the payment of the pre-war debts and the return of Italian property, while the Italian Government will pay to the Canadian Government the sum of 290 million lire in full satisfaction by the Italian Government of some of the Article 78 claims, the remainder to be settled in accordance with the treaty provisions.

At the time of writing no Canadian claims under Article 78 have been settled; neither have any cases as yet been submitted for conciliation.

2. Hungary

Mutatis mutandis the claims provisions in the Treaty of Peace with Hungary are identical with those of Article 78 of the Italian treaty. In the Treaty of Peace with Hungary the relevant Article is 26, compensation being two-thirds of the amount of loss or damage in forints. The Hungarian Government is made liable for loss of or damage to property in Northern Transylvania occurring while that territory was under Hungarian control. The armistice with Hungary was signed on January 20, 1945, and the treaty was ratified on September 19, 1947. The settlement of disputes arising out of claims under Article 26 is provided for by Article 35, which is not dissimilar from Article 83 of the Italian treaty.

A considerable number of Canadian claims have been presented to the Hungarian Government through the British Legation in Budapest, but the Hungarian Government has ignored these and similar Allied claims, and it would seem that the treaty procedure for dealing with claims under Article 26 is not operative.

However, Article 29, paragraph 1, reads as follows:

"Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Hungary or to Hungarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire within the limits of its claims and those of its nationals against Hungary or Hungarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Hungarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned."

Paragraph 5 of Article 29 excludes from any such liquidation certain types of property such as diplomatic or consular property.

The Canadian Government may desire to make use of Article 29 in order to provide some measure of limited compensation for Canadian claimants with unsatisfied claims under Article 26. The Custodian has in his hands approximately \$275,000 of funds of Hungarian origin and certain income which has accrued on these assets.

3. Roumania

In the Treaty of Peace with Roumania there are articles similar in effect to those mentioned above as being in the treaty with Hungary. Article 24 (Roumanian treaty) is comparable with Article 26 (Hungarian treaty), Article 27 (Roumanian treaty) is comparable with Article 29 (Hungarian treaty), and Article 32 (Roumanian treaty) is comparable with Article 35 (Hungarian treaty). The armistice with Roumania was signed on September 12, 1944, and the treaty was ratified on September 19, 1947. Canadian claims under Article 24 (Roumanian treaty) have been presented to the Roumanian Government through the British Legation in Bucharest. They have been ignored by that Government and it would seem that the treaty procedure provided by Article 32 (Roumanian treaty) for dealing with claims is not operative. However, under Article 27 (Roumanian treaty) funds of Roumanian origin in the hands of the Canadian Custodian seized during World War II may be applied to the satisfaction of all Canadian claims not satisfied under other articles of the Roumanian treaty. The Custodian has approximately \$300,000 of such funds exclusive of certain income which has accrued on these funds.

4. Finland

The claims provisions in Article 25 of the Treaty of Peace with Finland are similar to those of Article 78 of the Italian treaty. As there is no record of any such Canadian claims against the Finnish Government this matter need no longer be considered, but if such a claim should arise the treaty provides a means by which the claim may be wholly or partially satisfied otherwise than out of the War Claims Fund. There is no provision of this treaty under which any assets of Finnish origin which may be in Canada may be applied to the satisfaction of claims.

5. Thailand

On January 1, 1946, the United Kingdom and India entered into an agreement with Siam under which Siam agreed to compensate for certain losses and damage sustained by British subjects. Canada was not a party to this agreement not having been at war with Siam. In 1950 the United Kingdom on their own behalf and on behalf of certain other Commonwealth countries including Canada made a lump sum settlement with Thailand under which the United Kingdom Government received £5,224,220 out of which some payments have been made to Canadian claimants. Some payments have also been made to Canadian claimants directly by the Thai Government.

6. Japan

As indicated above, a law known as the Allied Powers Property Compensation Law has now received legislative approval in Japan. Reference to this law is made in Article 15(a) of the Treaty of Peace with Japan. This law, if and when it comes into force, will be of importance to Canadian claimants whose property in Japan sustained damage as a result of the war. The law is too detailed to call for more than an examination of its main features in this report. In essence it is very similar to Article 78 of the Italian treaty but an important

difference is that compensation is to be at the rate of one hundred per cent in the local currency and not at the rate of only two-thirds as in the Italian treaty. Compensation may be claimed in respect of losses sustained in Honshu, Hokkaido, Shikoku, Kyushu and other territory over which the sovereignty of Japan is restored by virtue of the peace treaty. Compensation may be claimed for damage caused by acts of hostility, for damage caused by the wartime special measures or other measures of the Japanese Government and its agencies, for damage on account of lack of due care on the part of the administrator or possessor of the property concerned, for damage suffered owing to the inability of an Allied national to have the property insured in Japan on account of the war and for damage suffered while in use of the Occupation Forces owing to lack of due care on their part or the inability of an Allied national to insure property. Compensation may be claimed for damage to the following: tangible property, use and lease of immovable property, debts, public loans, patents, trade marks and Allied shareholding interests in Japanese corporations. The claim of a Canadian claimant must be filed in writing by him through the Canadian Government within eighteen months from the time of coming into force of the peace treaty between Canada and Japan. In default of filing of the claim within the stipulated period of time, the claimant is to be regarded as having waived the claim for payment of compensation. Provision is made for the settlement of disputes arising in regard to a particular claim or claims.

7. France

As a result of an exchange of Notes in May, 1947, between the Canadian and French Governments the benefits of the French law on war damage compensation were given to Canadians, provided that the claim was filed with the competent French authorities not later than June 30, 1948. The basic French law providing compensation for war damage to property in France is Law No. 46-2389 of October 28, 1946. According to this law certain losses of immovable or moveable property caused by acts of war give rise to claims for compensation. Orders of priority among different classes of claimants are laid down. A corporation is excluded if either at least half of the directors were foreign nationals on September 1, 1939, or at time of loss, or if at least half of the capital was owned by foreign nationals on September 1, 1939, or at time of loss. Compensation paid is not freely usable in France but only in accordance with regulations laid down by the French authorities. The claims are dealt with by the appropriate departmental offices of the Ministry of Reconstruction and Town Planning and appeals from their decisions are allowed. A claimant could file his claim personally or through an agent. Claims were submitted by or on behalf of Canadian claimants through the Canadian Embassy in Paris, any further correspondence taking place between the claimant himself and the French authorities. While a considerable number of claims have been made by Canadians under this law, in very few cases have notifications of settlements been received by the Canadian Government. It is believed that the scale of war damage in France, as well as budgetary difficulties, have been contributory factors in delaying settlements.

8. The Netherlands

As a result of a decree of the Minister of Finance of September 10, 1947, the benefits of the Netherlands law on compensation for war damage were extended to persons, natural or juridical, who were Canadian at time of loss. Claims had to be filed with the War Damage Commission at The Hague not later than March 1, 1948. The basic decree on war damage compensation was passed on November 9, 1945. This decree is comprehensive in scope but claims will not be entertained in respect of money or securities or losses such as those of rents or profits. Very few Canadians are affected by the decree.

An organization which should be mentioned is the former German Custodian of Enemy Property in the Netherlands, known as the Deutsche Revisions- und Treuhand A.G. This organization seized a considerable amount of enemy property, including banking accounts owned by Canadians and other Allied nationals. After the war the Deutsche Revisions- und Treuhand A.G. was itself put into liquidation by the Netherlands authorities, who have been able to pay a fairly substantial dividend to Allied creditors.

9. Belgium

As a result of an exchange of Notes in March, 1950, between the Canadian and Belgian Governments the benefits of the Belgian law on war damage compensation were given to persons, natural or juridical, who were Canadian at time of loss. Claims had to be filed with the appropriate Belgian authorities not later than June 2, 1950. The basic law on war damage compensation was passed on October 1, 1947.

As in other cases the regulations are most detailed and it is too early to give any indication as to progress made in settlement of Canadian claims.

10. United Kingdom

The United Kingdom Government has had in operation for ten years a very comprehensive scheme for war damage compensation, operated by the War Damage Commission, from which Canadian owners of property in the United Kingdom can benefit.

Under certain circumstances it would be possible for a Canadian to obtain limited compensation from the United Kingdom Government under the Extended Far Eastern Private Chattels Scheme (War Damage) for war losses in the Far East.

11. Philippine Islands

The Philippine War Damage Commission was created after the war. The funds administered by it were voted by the United States Congress. Although the benefits of the law governing the Commission's activities were extended to Canadians the results have been disappointing, mainly, it seems, because of strict residence requirements. The Commission no longer exists. A very small number of Canadian claimants succeeded in receiving some payments which, however, bore little relation to the extent of their losses.

12. Malaya

The Malayan War Damage Claims Commission, with headquarters in Kuala Lumpur, came into existence in 1946, the funds for compensation being provided in the main by the United Kingdom Government. The activities of the Commission are of some interest as a considerable number of Canadians lost property in Malaya as a result of the war. Compensation may be claimed in respect of damage caused by acts of hostilities, measures taken under proper authority for the purpose of denying or diminishing the use of property to the enemy, measures taken under proper authority for military, naval or air training purposes or seizures or destruction by enemy forces or individual enemy subjects whether acting under authority or not. Compensation may be claimed for damage to land, buildings, business equipment, growing crops, livestock and private chattels, but not for loss of life, personal injury and loss of health, money, securities and documents generally, or what is termed consequential loss, such as loss of profits, rentals, income, goodwill or shareholdings in commercial undertakings.

Most, if not all, Canadian claimants have now received an initial payment of S.S. \$350 regardless of the amount by which the claim exceeds this amount. It is presumed that further sums will be paid eventually, but when it cannot be said. The Commission is handling a very great number of claims.

13. North Borneo, Sarawak and Brunei

The War Damage Claims Commission for these territories, with headquarters at Jesselton, North Borneo, was established in 1947 at the instance of the United Kingdom Government. Awards are either "Restoration awards" or "Outright awards", the former being conditional upon the work of restoration being carried out and the latter, in general, applying only to stock-in-trade, produce in store, livestock or private chattels, and being conditional upon applicants continuing local residence unless undue hardship would be caused by insistence on such a condition. One Canadian claimant, although no longer resident in the territories, has received a very small payment.

14. S.S. *Athenia*

The United Kingdom Government has made payments to most, if not all, Canadians who lost personal belongings when this ship was sunk. The payments were only in respect of property losses and on an "ex-gratia" basis. The payments varied from about 25% to 100% of the amounts claimed, the higher percentages being paid in respect of the smaller claims. Altogether about \$150,000 has been so paid to Canadians.

15. Compensation by Canadian Government for Death of Government Employees

The Canadian Government has in certain cases compensated claimants for losses resulting from the death of civilians killed while on Government business.

Incidentally, if the compensation has in any case been by way of pension, capitalization of the pension will be necessary for ascertaining the extent to which satisfaction of a claim which might otherwise be made against the War Claims Fund is otherwise provided for.

16. Interim Compensation for Property Losses

In a number of cases the Canadian Government has paid interim compensation to civilians for property losses. These are cases where Government servants lost personal belongings or household effects as a result of the war.

17. Interim Compensation for Losses Caused by Death or Personal Injuries Not Paid Out of the War Claims Fund

The Canadian Government is establishing a scheme for the interim compensation of such losses to a limited extent in hardship cases. While the Government will reimburse itself out of the War Claims Fund, interim compensation payments, made before the Fund is established will constitute satisfaction, in whole or in part, otherwise provided for. The same will be true of those made after the Fund is established, if they are not made out of the Fund.

18. Shareholders and Corporations

There may be cases where, under the rules established for the admissibility of claims against the War Claims Fund and provisions made for satisfaction from other sources, a corporation or a shareholder (either in that corporation or in a parent of it) might, in the absence of safeguards against duplication of satisfaction, make a claim against the War Claims Fund which will have

been or will be wholly or partially satisfied from another source. If, for example, corporation A has the status of a claimant under the Italian treaty while a shareholder in corporation A has not such status, but such shareholder has the status of a claimant against the War Claims Fund while corporation A has not, the shareholder is provided with a source of satisfaction other than the War Claims Fund because a corporation must be deemed to claim on behalf of its shareholders. Similarly, if a shareholder in corporation B has a claim under the Italian treaty while corporation B has not, but corporation B has a claim against the War Claims Fund which the shareholder has not, a source of partial satisfaction of corporation B's claim is provided because of the provision made for payment under the Italian treaty to its shareholder.

Extent and Operation of Principle

The instances of satisfaction otherwise provided for have been set out in some detail because in my opinion the general principle should be that claims should not be admitted against the War Claims Fund to the extent that the claimant either has been paid or is likely to obtain payment from another source, with this proviso, that if the claimant by reason of his own neglect or default has failed to receive or has forfeited or lost his eligibility to receive payment from another source he should be deemed to have received payment. This proviso may be difficult to apply but if a claimant knew or should have known that he would lose his entitlement to compensation if he did not apply within a certain time within which it would have been reasonable to expect him to apply his failure to do so should be regarded as neglect or default. Where it is alleged by a claimant that his compensation from outside sources is not or will not be complete, it may be necessary for his whole claim to be adjudicated with a debit to him of the amount which he has received or is likely to receive from sources other than the Fund, this amount being deducted from the amount that he would otherwise be entitled to be paid out of the Fund. The general principle to which I have referred is of general application and it may very well be that the foregoing list of instances of satisfaction otherwise provided for is not exhaustive. However, I do not think that war risk insurance moneys received by the claimant, although they must be deducted from the value of the property insured and lost in determining the amount of the loss, should be treated as satisfaction otherwise provided for, nor should other insurance moneys where they are taken into account in determining the amount of compensation. The selection of one way of treating them rather than the other may have importance in the application of the priorities recommended below.

As will be seen, my recommendation will be that each claim be dealt with by a Commissioner. It will be the duty of this Commissioner to decide whether and to what extent the claimant has been or likely will be compensated from other sources and recommend accordingly.

Cases may arise where it is uncertain whether any or further compensation will be available from another source. Take, for example, Malaya. If, upon inquiry about a particular claim, the Commissioner cannot find out from the Malayan War Damage Claims Commission whether any payments, or any further payments, will be made by that Commission on that claim, he will not be able to appraise with any confidence the claimant's chances of recovery from that source. It seems to me that in cases where recovery is not reasonably certain the Commissioner should proceed as follows: (a) if, in his opinion, the balance of probabilities is in favour of recovery he should defer his recommendation until recovery or until the prospects as to recovery become reasonably

certain, and (b) if, in his opinion, the balance of probabilities is against recovery he should recommend as if there would be no recovery on condition that the claimant assign his rights to any amounts recovered to the Crown in the right of Canada, or if future rights cannot be validly assigned that he undertake to do all things necessary to vest such amounts and his rights thereto in the Crown. In cases where recovery is reasonably certain the Commissioner should regard satisfaction as otherwise provided for, wholly or *pro tanto*, and decide accordingly. I may add that my expectation would be that in nearly all cases there would be reasonable certainty as to recoverability from sources outside the Fund before the Commissioner would normally adjudicate.

It will be apparent that a foreign country which has or will have a fund for distribution among its nationals having war claims but has not already made the distribution may, by adopting a provision similar to that recommended above—namely, that no payment will be made if satisfaction is otherwise provided for—be able, if the foregoing recommendation had no exception, to throw a burden on the Canadian Fund which it should not justly bear. For example, take a Canadian corporation which qualifies as a claimant against the Canadian Fund, but only to the extent that satisfaction of its shareholders is not otherwise provided for. Many of its shareholders are, let us say, nationals of a foreign country and would qualify for satisfaction there but for the adoption of a provision there such as I mentioned. But the adoption of such a provision by the foreign country would throw the whole burden of satisfying the corporation's claim and that of its shareholders on the Canadian Fund. Or let us say that A qualifies as a claimant against the Canadian Fund to the extent that satisfaction of his claim is not otherwise provided for and, but for the adoption of such a provision abroad, would also qualify as a claimant against the foreign fund. The adoption of such a provision by the foreign country would throw the burden of satisfying A's claim on the Canadian Fund. It seems to me that such provisions, if any are made with respect to foreign funds, should be disregarded in determining whether satisfaction is otherwise provided, but that where such a provision exists the Canadian Government should stand ready in respect of any claim or claims to agree with the authorities of the foreign country on a fair division of the burden. Ordinarily, of course, it would be just as unfair for Canada to attempt to throw the full burden on the foreign country's fund as for the foreign country to attempt to throw the full burden on Canada's Fund. There is, however, no unfairness in expecting countries where, or on whose ships, the loss or damage took place to assume the primary responsibility for compensating such losses.

Pooling

The next question that arises is whether all moneys in the War Claims Fund, whether derived from German sources or Japanese sources, should be pooled for payment of Canadian war claims regardless of where the losses took place or by whom they were caused, without relating the amount payable on the claim for any particular loss to the funds obtained from any particular national source, and without limiting the amount available for payment of claims for losses arising in a particular area or from the acts of a particular government or its agencies to the funds derived from some particular national source; that is, to assets of German origin or to assets of Japanese origin. For convenience of reference this will be referred to as pooling. My recommendation is that all the funds and assets in the War Claims Fund, no matter from what source derived, be pooled and that all war claims admissible for compensation be eligible for payment out of the Fund just as if Canada had been at war

with only one power and all the losses had taken place in the territory of and had been caused by that power. This recommendation is made for the following reasons:

1. The war was a world war and losses inflicted on Canadians by any enemy power in any part of the world were inflicted for the direct or indirect benefit of all enemy powers.

2. If the principle were adopted that the assets derived from any particular nation or its nationals should be applied only to the losses caused by or in that nation or in areas occupied by that nation there is no good reason why the German assets should not be applied only to meeting losses caused by or in Germany or in German-occupied areas, and the Japanese assets applied only to the losses caused by or in Japan or in Japanese-occupied areas. The result would be great inequality in the treatment of claimants. If, for example, Hungary alone were responsible for losses in areas in Hungary while not occupied by the German forces claimants for such losses would receive very little or no compensation because there are no Hungarian assets available for contribution to the Fund—and the amount recoverable under the Hungarian treaty would at best be extremely limited because of the gross disparity between Hungarian assets in Canada and the treaty claims against them. But Canadian claimants for losses in Roumania would receive large dividends owing to the fact that there is not the same disparity between Roumanian assets in Canada and claims. Similar examples with reference to other countries could be given. Moreover, if only Japanese assets were available for satisfying claims for losses in the Far East and the claims for compensation for deaths, personal injuries and maltreatment attained large proportions there might be very little left for satisfaction of claims for property losses there while claimants for property losses in Germany might be fully compensated.

3. The prime aggressors in World War II were Germany and Japan and more than any other countries they were responsible for the losses wherever they took place. It is, of course, impossible to apportion the responsibility between them and it seems only fair that the assets obtained from them should be pooled for meeting these losses.

4. In many cases it is impossible to ascertain which enemy state caused the loss and in other cases it is impossible to determine whether the loss was caused by enemies or allies, or by enemies or Canadians, as in cases of mines, artillery fire and air raids. Losses from looting and losses on the high seas present similar difficulties.

It may be added that examination of Article 6A of the Final Act of the Paris Conference on Reparation and Article 14 of the Treaty of Peace with Japan indicates that the German assets and the Japanese assets may be pooled if the Canadian Government thinks fit. In saying this, I am assuming that the Treaty of Peace with Japan will be ratified.

The next question to be dealt with is as to what war claims should be treated as admissible for compensation.

Claims "Arising Out of World War II"

The term "World War II" is a loose one used as a general description to cover the group of wars between all the countries ultimately involved during the period following September 1, 1939, when Germany invaded Poland. As regards Canada, it is a general term designating the group of wars in which Canada was a belligerent in the period following early September, 1939, and ending with the surrender of Japan in September, 1945. In one sense any

demand for compensation alleged to be just for losses or injuries alleged to have been caused by World War II is a claim arising out of World War II but many of these demands can be dismissed at once as not really arising out of World War II and, therefore, as not being war claims within the meaning of the terms of reference. The classes of claims that can be so dismissed are the following:

1. Claims where the act complained of as causing the injury or loss took place either before or after certain dates:

The act complained of, if it took place outside the Far Eastern theatre of war, should, in my opinion, not be regarded as giving rise to a claim arising out of World War II unless it occurred between September 1, 1939, and May 8, 1945, inclusive. Incidentally, if it did occur during this period and resulted in injury or loss of a compensable kind and was of such a character that a war claim for compensation for that injury or loss may, by the rules set out below, be based upon it, the claim should be considered a valid claim arising out of World War II. If the act complained of took place within the Far Eastern theatre of war the comparable dates should be December 7, 1941, and September 2, 1945, except that if it is established that an act complained of although occurring in the Far Eastern theatre of war occurred on the high seas in the course of the war between Canada and her Allies and Germany and her European Allies, the relevant dates should be September 1, 1939, and May 8, 1945. It was after September 1, 1939, that the *S.S. Athenia* was sunk, and although the sinking took place before Canada declared war, it was followed so closely by Canada's declaration of war that the resulting losses to and injuries of Canadians should be regarded as arising out of warfare in World War II between Canada and Germany. The reason for the selection of the dates is obvious: December 7, 1941, was the date of the bombing of Pearl Harbour, May 8, 1945, was the date of the surrender of Germany, and September 2, 1945, was the date of the surrender of Japan.

2. Claims which arose out of any of the following wars:

(a) the Sino-Japanese War, from July 7, 1937, to December 6, 1941.

Canada was a neutral in this conflict and claims by Canadians for losses in this war clearly did not arise out of World War II.

(b) the Russian-Finnish War of 1939-1940.

This again was a war in which Canada was a neutral.

(c) civil wars, for example, the civil war in Greece which began in 1944 and those in Indonesia, Indo-China and Palestine.

With regard to the wars above mentioned it may be said generally that the Government of Canada could not reasonably be expected to compensate its nationals for losses arising from wars in which Canada was a neutral out of funds obtained as a result of another war even though (as in the case of Japan, though not in the case of Finland) the funds later obtained may have been obtained from one of the parties to the earlier conflict.

3. Claims which come within any of the following classes:

(a) Claims arising out of pre-war confiscatory measures.

Some claims of this kind have been filed by persons whose property was confiscated or made subject to penal taxation for racial reasons and who emigrated to Canada. All or most of the losses took place in Germany, Austria, Czechoslovakia, and the Memel Territory. In many cases the property was restored after the war, but in some areas subject to Communist control re-confiscation through nationalization is said to have taken place. Clearly

claims for compensation for losses caused by pre-war acts did not arise out of the war. And, neither, as will be seen below, can a claim for compensation for nationalization be said to arise out of the war.

(b) Claims arising out of pre-war contracts and obligations.

While it would seem to be obvious that these did not arise out of the war, the distinction between them and war claims is not always obvious to claimants. The distinction is made clear in Article 2 of the Final Act of the Paris Conference on Reparation of 1945, Article 18 of the Treaty of Peace with Japan, Article 81 of the Treaty of Peace with Italy and similar articles in the other treaties of peace.

The main types of claims arising out of pre-war contracts and obligations which have been received are the following:

- (i) Standstill Agreement Claims. These are claims against German banks in U.S. dollars or sterling, suspended by the moratorium granted to German banks some twenty years ago.
- (ii) Bond Claims. The largest claims are by the holders of U.S. dollar or sterling bonds issued or guaranteed by the German Government in connection with the Dawes Loan, 1924, and the Young Loan, 1930. Other bondholders claim in respect of German municipal, banking or industrial bonds, many of which were guaranteed by the former German Government. Large amounts have also been claimed in respect of German indebtedness payable in local currency, such as claims on the Mark bonds which have been worthless since 1923. Smaller sums have also been claimed in respect of Japan's indebtedness payable either in U.S. dollars or sterling or in local currency.
- (iii) Commercial Credits. Many claims have been received from corporations, merchants and traders for amounts due them as the result of commercial transactions entered into before the war and which they have not been able to collect because of the insolvency or disappearance of the debtor or for some similar reason. Claimants allege that these losses have arisen out of the war. However, apart from the fact that the debts may still exist and the creditors have had their remedies against their debtors for what they were worth, the claims should not be regarded as arising out of the war because as will be seen later a distinction must be drawn between losses caused by the existence of a state of war and those caused by operations of war, the latter only being compensable, and the losses of these creditors can in no sense be said to be the direct consequence of any act of war. Moreover, the debts may have turned out to be uncollectable for any one of many reasons so that in many if not all cases it could never be proved that the loss was caused even by the existence of a state of war.
- (c) Claims arising out of inflation or depreciation in the exchange value of currency.

The claimants here were owners of currency or obligations payable to them in currency which has wholly or partially lost its value, for example the Hungarian pengo, the Chinese dollar, the Japanese yen or the Italian lira. This loss in value if it had its origin in the war at all was caused by the existence of a general state of war rather than by operations of war, which cannot be said to have directly caused the loss in value in any sense comparable to that in which it may be said that war operations damaged or destroyed physical assets. Inflation or depreciation losses during the war visited whole populations in all countries and to admit them as losses arising out of the war—at least with a view to compensation—would open the War Claims Fund to claims from all Canadians. Again, conceivably the same losses might have been incurred had there been no

war at all but the nations generally had by huge expenditures been put in a very advanced stage of preparedness for war. Assessment of losses from currency inflation or depreciation would be impossible as the extent of the inflation or depreciation which would have taken place had there been no war is unknown. I am of opinion that it would be both impracticable and unjust to treat such losses as arising out of World War II.

(d) Claims arising out of foreign exchange control legislation abroad.

The claims are by persons who say they "cannot get their money out", but in many cases it is improbable that they could have done so had there been no war. These claims cannot be said to arise even from the existence of a state of war, let alone war operations.

(e) Claims arising out of nationalization.

In this class are included all types of claims for compensation for property of which the claimants were divested by industrial nationalization, land reform and redistribution of property. The total losses of Canadians on this account run into hundreds of millions of dollars, or several times the total of all known war claims. In most, if not all cases, nationalization took place in the period following upon the close of hostilities and claims of this nature, therefore, cannot be considered to be war claims arising out of World War II. If nationalization in any case took place during World War II a claim arising for resulting losses should still not be regarded as a claim arising out of that war because nationalization was a general measure of economic policy affecting enemies and non-enemies alike and, therefore, in no sense an operation of war.

Claims "By Canadians"

The terms of reference require me to consider claims "by Canadians". There are two separate questions involved, namely:

1. At what time or times must the claimant have been a Canadian?
2. Who is to be considered a Canadian?

The first question arises in this way. The simplest type of claim is that put forward by a person who, whatever meaning is given to the word "Canadian", was a Canadian at the time of the outbreak of war, at the time of the act complained of, at the time of the loss or injury, at the time he filed his claim, and is a Canadian at the time any award of compensation is made to him. On the other hand, there may be claims filed by persons who were not Canadians at the time of the outbreak of war, or at the time the loss occurred, but have since become Canadians. There may be claims by persons who were Canadians at the outbreak of war and at the time the loss occurred, but who have since ceased to be Canadians. It is necessary, therefore, to consider the time that is relevant for the purpose of determining whether the claim is a claim "by a Canadian". In this respect, the use of the word "claim" is somewhat misleading. A claim, by dictionary meaning, is merely a "demand", and, therefore, if the terms of reference were interpreted literally, the only question would be whether, at the time the demand for payment was filed, the claimant was a Canadian. This, however, would be to place a procedural interpretation on the subject matter of the terms of reference rather than to deal with the substantial question. The substantial question is, what losses of Canadians are to be compensated. In my view, therefore, the time when a person must have been a Canadian was at the time of loss, but loss in this context, though not for certain other purposes later mentioned in the report, should be taken substantially as meaning the time when the act took place which caused the loss. This meaning will, however, be more precisely explained a little later.

As a great many claims have been received from persons who were not Canadians at the time of loss it is necessary briefly to consider the justification of a requirement that a claimant must have been a Canadian at that time. The requirement is based upon the assumption that nationality rather than domicile or residence (subject to what is said below about corporations, and subject to the extent to which the domicile of an individual is an element in his nationality) should be the test of whether a person should for claim purposes be regarded as a Canadian. That this should be the test is in accordance with past practice and is justifiable in principle. Nationality is a person's political status which binds him by the tie of national allegiance to some sovereign or country. In the distribution of reparations the Government in considering the claims of natural persons against a reparations fund naturally and justly considers that those who were bound to that country by the tie of national allegiance at the times they suffered the losses for which they seek compensation (provided they are still so bound) are the ones who have moral claims to shares of the fund. The United Kingdom Government after World War I appointed a Royal Commission on Compensation for Suffering and Damage by Enemy Action (to be referred to as the Sumner Commission) "to consider cases in which there is a moral claim by *British Nationals* . . . for compensation for sufferings or damage arising out of the action of the enemy during the War." The Commissioners appointed in Canada after World War I to consider claims against the Reparations Fund rejected several claims on the ground that the claimants were not Canadian nationals or British subjects at the time of the loss for which they claimed compensation. Nationality is also the basis of claims under the Italian treaty and under the Japanese treaty. Moreover, the United States War Claims Commission in their report of March 31, 1950, recommended the adoption of the same principle and considered that the position taken in that respect was in accordance with past practice and amply justified by reference to the authorities. (p. 6).

The first nationality requirement should, therefore, be that the claimant must have been a Canadian at the time of loss, the words "time of loss" in this context to mean:

- (a) where the claim is for compensation for loss resulting from the death of another person, the time of the inflicting of the injury which caused the death (injury by maltreatment to be deemed to have been inflicted at the beginning of the maltreatment);
- (b) where the claim is for compensation for personal injury the time when the injury was inflicted (injury by maltreatment to be deemed to have been inflicted at the beginning of the maltreatment);
- (c) where the claim is for compensation for maltreatment *per se* the beginning of the maltreatment;
- (d) where the claim is for compensation for loss of or damage to property the time of the act which resulted in the loss or damage.

There should, however, in my opinion, be a second nationality requirement: namely, that the claimant if an individual should be a Canadian citizen and if a corporation should be a Canadian at the time of the presentation of his or its claim for adjudication. The propriety of this requirement would appear to follow from a reasonable interpretation of the terms of reference. Moreover, the general rule applicable to claims for damages made by one state against another state for injuries or losses sustained by the nationals of the claimant state, apart from specific provisions in conventions or treaties, is "that the claim must be continuously national; i.e. owned by a national of the claimant state from the date of the original injury to the date of the presentation of the claim." (Whiteman on Damages in International Law, Vol. 1, p. 109). Whiteman goes on to say that "presentation" is generally interpreted by arbitral tribunals

to mean the date of presenting the claim to the tribunal or of filing the memorial. The question as to when a claimant should be deemed to have presented his claim for adjudication may raise some difficulty. Claims of varying degrees of completeness or regularity have been filed with the Government during the past twelve years. With regard to every claim that has been made or will have been made before the appointment of a Commissioner having power to adjudicate the claim, the date of the appointment of the Commissioner should, in my opinion, be taken as the date of presentation of the claim for adjudication. Where a claim is first made after that date the date when the Commissioner receives notice of the claim should be taken as the date of presentation.

While the nationality of an executor or administrator claiming on behalf of an estate should at all times be regarded as immaterial, no awards should be made for the benefit of any beneficiary of an estate who was not a Canadian citizen at time of presentation unless the deceased was alive at time of presentation and was a Canadian citizen at that time, in which event the nationality of beneficiaries should be regarded as immaterial. This recommendation follows as nearly as may be the general practice of arbitral tribunals in claims of state against state. (Borchard on Diplomatic Protection of Citizens Abroad, p. 628 and following). Beneficiaries in this connection should include dependents claiming maltreatment awards.

The term "Canadian citizen" as used above presents no difficulty of interpretation as it is defined in the Canadian Citizenship Act which came into force on January 1, 1947. The term "Canadian" as applied to individuals must be defined because the time of loss in most, if not all, cases was before the Canadian Citizenship Act was passed. Before the passage of this Act several statutes had been enacted dealing with the status of Canadians for various purposes with varying definitions for each purpose. The Canadian Nationals Act (chapter 21 R.S.C., 1927) defined "Canadian nationals". This Act, however, had a very limited application and has been repealed. The Immigration Act defined "Canadian citizen" for the purpose of determining whether a person had a right to enter Canada or return to Canada as distinguished from the person who, having no right to enter or return, could be admitted only as an immigrant for temporary purposes. The Naturalization Act defined the term "British subject" for the purposes of Canadian law and provided a method by which the status of British subject could be secured by naturalization in Canada. The status of British subject was, however, held by persons throughout the British Commonwealth without any distinction between those who derived their status from Canada and those who derived it from other parts of the Commonwealth.

As we now have a Canadian Citizenship Act which expresses the view of Parliament as to what persons should be regarded and treated as Canadian citizens it would appear that for purposes of compensation for war claims the definition of a Canadian should follow as closely as possible the definition of a Canadian citizen as contained in the Canadian Citizenship Act. To this principle, however, there should, in my opinion, be one important exception. After World War I it seems to have been considered both by the authorities administering war claims in the United Kingdom and in Canada that for compensation purposes a person who at a relevant time was a British subject domiciled in Canada should be treated as a Canadian at that time. Indeed, I do not think it is too much to say that to the extent that the matter had been considered at all in this country before the enactment of the Canadian Citizenship Act it had been rather widely considered that British subjects domiciled in Canada should be regarded as Canadians. In any event the connection of such persons with Canada would appear to be closer than their connection with any other part of the British

Commonwealth, a fact which has considerable relevancy when claims for compensation for war losses are considered. I have, therefore, come to the conclusion that in defining a Canadian there should be added to the definition of Canadian citizen as contained in the Canadian Citizenship Act words including British subjects domiciled in Canada. My recommendation is that the definition of a Canadian as applied to individuals be as follows:

A Canadian means with respect to any relevant time a person

- (i) who was born in Canada and had not become an alien at the relevant time; or
- (ii) who was born outside of Canada and his father, or in the case of a person born out of wedlock, his mother,
 - (a) was born in Canada and had not become an alien at the time of that person's birth, or
 - (b) was, at the time of that person's birth, a British subject who had Canadian domicile,
 if at the relevant time that person had not become an alien and had either been lawfully admitted to Canada for permanent residence or was a minor;
- (iii) who was granted or whose name was included in a certificate of naturalization granted in Canada and that person had not become an alien at the relevant time;
- (iv) who at the relevant time was a British subject who had Canadian domicile; or
- (v) who being a woman other than a woman who comes within paragraph (iii) or (iv)
 - (a) before the relevant time was married to a man who at the time of the marriage possessed the qualifications set out in paragraphs (i) (ii) (iii) or (iv); and
 - (b) at the relevant time was a British subject and had been lawfully admitted to Canada for permanent residence; or
- (vi) who at the relevant time was a British subject having a domicile in Canada.

Newfoundland should be deemed at all times to have been part of Canada.

It will be noted that the term "Canadian domicile" is used in the definition suggested above. This term should be defined as meaning Canadian domicile within the meaning of the Immigration Act. If any question arises in any adjudication by a Commissioner as to whether any person had Canadian domicile at any relevant time the question should be determined by the same authority and in a like manner as if it arose under the Immigration Act and the determination thereof in such manner should be final and conclusive for the purpose of the adjudication, as otherwise rulings by a Commissioner or Commissioners on a question of Canadian domicile might be made which would be inconsistent with prior or subsequent rulings of the Department of Citizenship and Immigration. When other questions of domicile arise in adjudications the ruling in each case should be made by the Commissioner making the adjudication and domicile in that case should mean domicile in accordance with the principles of the common law.

In addition to persons who qualify as Canadians under the definition suggested above there is another class of persons who, in my opinion, should be treated as Canadians for compensation purposes. These are alien members of the armed forces. If a person, whatever his nationality, enlisted and served in the army, navy, or air forces of Canada for active service in World War II and was honourably discharged therefrom he should be regarded as having been

a Canadian at all times between his enlistment and his discharge. He should, however, in my opinion, be required to be a Canadian citizen at time of presentation of his claim.

Notwithstanding the foregoing there may be some persons who would qualify as Canadians under the suggested definition who should not be eligible for compensation. These belong to the class of dual nationals. It is possible that some persons who at the relevant time were Canadians as defined above were at that time also nationals of another country. Dual nationality can arise in a number of ways. A person born in Canada of a Swiss father or a person born in Denmark of a Canadian father would be examples of two common types of dual nationality. At first glance it might seem that all Canadian dual nationals should be treated alike and that all should be treated in the same manner as other Canadians. But in certain cases I think that the domicile of a Canadian dual national should have a bearing upon his entitlement. The case of a Canadian dual national who is domiciled in the country of his second nationality requires special examination. There would appear to be no good reason why the Canadian Government should entertain a claim say from a Canadian-Portuguese dual national who was domiciled in Portugal at the time of loss. It would seem proper to deny such a claim and that to do so would be consistent with the view that domicile in Canada at time of loss should in certain cases be a determining factor in establishing Canadian nationality and thus, indirectly, entitlement, which is the view upon which certain parts of the definition of Canadian above recommended is based. It seems to me that while possession of dual nationality by a claimant should not in itself bar his claim, no consideration should be given to a claim from a Canadian who at time of loss possessed a second nationality and who was at that time domiciled in the country of his second nationality, subject, however, to this one exception, that the claim of such a Canadian upon whom loss or injury was inflicted by enemy authorities on account of his being a Canadian should be admitted to the extent, but only to the extent, of the loss or injury so inflicted.

It will be observed that the rules suggested for dual nationals apply to Canadians whose second nationality was that of an Allied country, a neutral country or an enemy country. Perhaps it would be useful to suggest some hypothetical examples of how these rules would work out in practice:

(a) Let us assume that a Canadian-Belgian dual national, domiciled in Belgium throughout the war, owned a ball-bearing factory in Germany which was destroyed during an Allied bombing raid. The claim from such a person should not be entertained. The natural source of his compensation, if any, should be regarded as either the Belgian Government or the German Government.

(b) Let us assume that a Canadian-German dual national was domiciled in Germany at the outbreak of war, that he insisted on being regarded as a Canadian by the German authorities and as a result was placed in an internment camp where severe maltreatment left him with a permanent disability, that at the time he was interned his personal property was seized by the German authorities and never returned to him, and that during the period of his internment his house was destroyed in an air-raid. Such a person should be awarded compensation out of the War Claims Fund for personal injuries arising from maltreatment, for the maltreatment itself, and for the loss of his personal property, but none from this Fund for the destruction of his house.

It may be unnecessary to add that the suggested rules for barring certain claims of dual nationals have reference only to dual nationality at the time of loss, and not to dual nationality at the time of presentation of the claim. The relevant question with reference to time of presentation is whether the

claimant was a Canadian citizen then, and all questions as to whether he was a national of another country or domiciled in another country at that time should be regarded as irrelevant.

There may be claimants who because they are dual nationals have received or are likely to receive compensation from other governments or authorities. In such cases the general rule that compensation should not be paid to the extent that it is otherwise provided for should be followed.

During the war persons who in addition to being Canadians also possessed an enemy nationality were faced with difficult problems arising from a conflict of loyalties and as a natural result there were some who chose to give collaboration, cooperation or assistance to an enemy. There is no need to formulate a special rule for this group because they would come within a general rule which I propose to recommend, and, for purposes of convenience, at this stage of the report.

This general rule is that where there was any voluntary collaboration or cooperation with or assistance to an enemy, in any part of its war effort, on the part of a claimant, whatever his nationality or nationalities, and whether individual or corporate, that claimant should be denied all participation in and should receive nothing out of the War Claims Fund. It may be unnecessary to add that in the case of the death of such a person where his claim, if good, would survive for the benefit of his estate, no compensation in respect of losses or injuries suffered by such a person should be paid to his heirs, executors, or administrators.

The foregoing definition of a Canadian obviously applies to "individuals" only, by which I mean persons other than corporations. The question as to what corporations should be treated as Canadians raises other questions. The reason for making nationality rather than domicile or residence, or something else, the governing test of eligibility of individual claimants does not apply to corporations. An individual's nationality binds him by the tie of national allegiance to some one sovereign or country but "the application of such ideas to a limited company is incongruous; allegiance and loyalty are personal by the nature of the case. An incorporated company cannot with propriety have such terms applied to it as if it were a mind subject to emotions or passions or a sense of duty." (Lord Shaw of Dunfermline in *Daimler Company Limited v. Continental Tyre and Rubber Company (Great Britain) Limited* [1916] 2 A.C., p. 329). Moreover, it is submitted that the unfairness of making incorporation or registration in Canada (the nationality test) the test of eligibility of a claimant when the attempt which is being made is to decide what claimants have moral claims is obvious. Reference has been made to the Sumner Commission, appointed by the United Kingdom Government after the First World War "to consider cases in which there is a moral claim by British Nationals . . . for compensation for sufferings or damage arising out of the action of the enemy during the War . . ." Despite the reference to "British Nationals" the Commission did not feel that it could fairly make British registration the test of a corporation's right to rank on the Fund. It said (p. 8 of final report): "The obligation to exclude aliens from ranking upon the Fund presents difficulty in dealing with claims by Corporations. It would be equally inadmissible to permit a company, whose management and shareholding were both foreign, to rank on the Fund in competition with British claimants, merely because of a British registration, and, conversely, where a company is British in capital and direction and has only been registered abroad for some legitimate and

technical reason, it would be inequitable to exclude it." The test the Commission applied was the test of control. I now quote the passage following that quoted above:

"In such cases the Commission have acted on the test of control, which has been adopted in legal decisions as the best test of British character. Similarly, in accordance with the decided cases, the place where the mind and management of a company reside has been adopted as the important matter when the domicile of a company has to be found. When the Commission have had to deal with exceptional cases, they felt it right to have regard to what may justly be thought to fall within the intentions, which guided the provision of the Fund."

The reference in this passage to domicile appears to be to commercial domicile, that "anomalous species of domicil which springs into being during war" (Cheshire on Private International Law, 3rd. Ed., p. 240) which invests its possessor with enemy character and which "is possessed by any person, even a British subject or a neutral, who is voluntarily and actually resident, or who carries on business, in the hostile country, or in territory effectively occupied by the enemy" (Ibid., p. 241). I do not think that much help is to be derived from the rules relating to commercial domicile when we seek for a test of eligibility of a corporate claimant against the War Claims Fund. However, I would adopt as one of the tests of eligibility of corporations the test of control in a somewhat different sense. It seems to me that in determining what corporate claimants should be recognized as Canadian claimants the first requirement should be that the central management and control should be in Canada; in other words, that the company (whether it is an income tax payer or not) be resident in Canada within the meaning of the term "resident" as used in the Income Tax Act. A company resides for the purpose of income tax where its real business is carried on and the real business is deemed to be carried on where the central management and control actually abide. This test should not be adopted because it is the income tax test but because of the vital bearing it has on the question of whether a corporation which does not carry on its real business in Canada can reasonably be regarded as Canadian. I am of opinion that it cannot.

But, residence should not be the only test. It seems to me that the corporation in addition to residing in Canada should, in order to be regarded as Canadian, be engaged in active trading activities in Canada, either itself or through one or more subsidiaries, that is, subsidiaries either wholly owned or controlled by it. If it is so engaged in trading activities in Canada, which I would define as business operations in Canada of an industrial, mining, commercial, public utility, or public service nature, and complies with the residence test I have mentioned and the other test which I shall mention, it can, I think, be reasonably regarded for the purposes of claiming against the War Claims Fund as a Canadian, but otherwise not.

The third requirement is this: a substantial part of the corporation's capital (not necessarily its share capital) should be Canadian. As the policy of this country has for many years been to encourage the inflow of capital for investment in industrial, mining, commercial and similar operations it would seem inappropriate to require a very large proportion of the capital to be Canadian before regarding the corporation as Canadian. In fixing the proportion probably no better precedent can be followed than that recently set by the United States in the agreement dated July 19, 1948, between the United States and Yugoslavia regarding pecuniary claims of the United States and its nationals against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and of rights and

interests in and with respect to property which occurred between September 1, 1939, and the date of the agreement. Article 2 of the agreement is as follows:

"The claims of nationals of the United States to which reference is made in Article 1 of this Agreement include those respecting property and rights and interests in and with respect to property, which at the time of nationalization or other taking were:

- (A) Directly owned by an individual who at such time was a national of the United States.
- (B) Directly owned by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty per cent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly, or indirectly through interests in one or more juridical persons of whatever nationality, or otherwise; or
- (C) Indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through interests, direct, or indirect in one or more juridical persons not within category (B) above, or otherwise."

I recommend that a corporation claimant be treated as a Canadian at time of loss if it satisfies the residence and trading activities requirements which I have mentioned (as of time of loss) and also the requirement that 20 per cent or more of any class of its outstanding securities be owned (at time of loss) by individual Canadians (as defined above) directly, or indirectly through interests in one or more juridical persons of whatever nationality or otherwise. The scheme of compensation of corporations and their shareholders will then be practically the same as that adopted by the United States for compensation of corporations and shareholders having nationalization claims against Yugoslavia except that for corporations the nationality test ("organized under the laws of the United States, or a constituent state or other political entity thereof") will be replaced by the residence and trading activities tests which I have mentioned. These I consider more suitable in the light of the obvious lack of real significance of the place of registration.

If the passing of these three tests is required in determining whether a corporation is a Canadian it will in my opinion have the effect of singling out corporations whose real interests are Canadian and whose successful operations are of importance to Canadians. While the principle which should apply to the payment of compensation for losses to individuals arising from war operations is based upon the recognition, as the converse of the duty of allegiance owed by the individual, of the right to be afforded protection and compensation for loss, the principle applicable to the payment of compensation to corporations should be the benefit of Canadians or of interests that are essentially Canadian. This necessitates the selection of corporations in which more than a negligible amount of Canadian capital has been invested and which may be said to carry on essentially Canadian operations. The application of the three tests recommended will, in my opinion, give effect to this principle.

I should add that a corporation claimant should be treated as a Canadian at time of presentation of its claim if it satisfies the residence and trading activities requirements which I have mentioned (as of time of presentation) and also the requirement that 20 per cent or more of any class of its outstanding securities be owned (at time of presentation) by individual Canadian citizens directly, or indirectly through interests in one or more juridical persons of whatever nationality or otherwise.

There are some corporate claimants of a religious, educational, or charitable character which have their residence in Canada but which do not, from their very nature, carry on trading activities. These should be eligible to claim and the definition of Canadian should be framed in such a way as not to exclude them.

As will be seen later it will be recommended that Canadians who hold, directly or indirectly, ownership interest in corporations or associations, not Canadian, whose property was lost or damaged by operations of war should be eligible to claim compensation for such losses. The definition of the word "Canadian" as applied to corporations is, therefore, of importance not only in cases where a Canadian corporation suffered losses of or damage to property owned by it abroad but in cases where the Canadian corporation owned shares—in some cases all the shares—in foreign corporations which suffered losses of or damage to property.

The definition of the word "Canadian" as applied to governments should cause no difficulty. The Government of Canada, the Government of any province, including a province which was not part of Canada at time of loss, and the Government of any municipality in Canada should be regarded as Canadian.

It may be added that among the corporations excluded by the application of the suggested tests would be investment companies, whether non-resident owned or not, personal corporations which carry on no trading activities either themselves or through wholly owned or controlled subsidiaries, foreign business corporations, and non-resident corporations, these terms all being used in the sense in which they are used in the Income Tax Act. The shareholders in such corporations who were Canadians at the time of loss may have valid claims even if their ownership interests in the property lost are indirectly held by them through such corporations, the shareholders having, and the corporations not having, the status of Canadians.

Claims in Respect of Death and Personal Injury

The question to be discussed under this heading is what claims arising out of World War II and asserted by Canadians in respect of death or personal injury should be admissible for compensation and to what extent.

It is obvious that not all persons who were injuriously affected by the war should be compensated out of reparations for their injuries or losses. Many claims for such compensation are clearly inadmissible, whether the claims be in respect of death, personal injury, maltreatment, or loss of or damage to property. War invariably causes loss and hardships of varying kinds to most, if not all, persons in a belligerent nation. The wife who is widowed by the death of her husband on service, the member of the forces who is disabled while on service, the member of the forces who, while he returns unscathed, has lost years from his career or business and possibly a great deal of income, the business man whose operations are restricted or closed down by necessary government regulation, the individual on a fixed income whose income taxes soar as a result of the war, the reduction in the standard of living from scarcities or inflation, all these are examples of groups, some of them very large groups, of persons in a belligerent nation who are injuriously affected by a war. It has always been recognized that compensation cannot possibly be paid to all the individuals in these large groups in a nation and that only those war claims should be admissible which arise from particular wartime activities that produce special injury or loss to the individual affected which he suffers over and above the general burden shared by great classes of the community. It is necessary

at the outset, therefore, to specify the wartime activities which should be regarded as legitimate bases for admissible war claims in respect of death or personal injury.

Assume a civilian is injured by an explosion in a wartime explosives factory where he became employed because his normal peacetime employment had ended because of the war. In a sense his injury arose out of the war. The plant was producing war explosives; he became employed in it because of the war; his work is in a sense an actual operation of war. Or assume a civilian who in peacetime worked in a factory but because it closed as a result of the war became employed on a farm and was injured while farming. He would never have become employed on the farm but for the war and farming is important to the carrying on of the war. Is either of these injuries to be treated as an injury arising out of the war so that an admissible war claim may be made in respect of it? No clear or well-established principles have been laid down for assistance in answering such questions. The best that can be done is to keep in mind certain considerations. One is that almost all activities of persons in a nation during wartime are in some way connected with the war, that obviously not all deaths or injuries occurring in these activities can be compensated for, and that there must be some immediate connection between the death or injury and activities of a peculiarly wartime nature as distinguished from civilian activities directed to wartime ends. Another consideration is that the losses to be compensated must be of such a nature that they fall on particular individuals so as to impose a type of burden on them greater than the general burdens that fall on all or most persons in wartime. Another consideration is the necessity of dealing fairly and justly with all Canadians and the unfairness of paying compensation to a small group for a type of loss or for an element of loss that does not differ from losses or elements of loss for which other Canadians are not compensated. Taking these considerations into account I have come to the conclusion that loss from death or personal injury should be considered as giving rise to an admissible war claim where the death or personal injury was caused by:

1. the carrying on of actual warfare by any of the belligerent armed forces, whether army, navy, or air forces, and whether those of an enemy or an ally of an enemy, or Canadian or Allied forces anywhere in the world outside of Canada; or

2. maltreatment in internment or detention by civilian or military authorities of an enemy or an ally of an enemy. (A list of the countries to be considered allies of an enemy for this and other purposes mentioned in this report will have to be compiled without strict limitation of the word "ally" to its dictionary meaning when the regulations for guidance of Commissioners are made, the evidence before me not being sufficient to enable me to do so).

The recognition that loss caused by death or personal injury resulting from these causes should give rise to admissible war claims is, generally speaking, in accordance with the principles applied in the past by tribunals functioning under treaties or otherwise, and in my view gives effect to the considerations mentioned above. There is no doubt that the carrying on of actual warfare by the belligerent armed forces is a war operation. It is of the essence of war. Similarly internment by enemy governments is an act of war. Individuals are interned or detained because of their enemy character. For reasons to be given later in the discussion of maltreatment, compensation should not be payable, in my opinion, for mere internment, but where internment is accompanied by maltreatment which results in the death or injury of the person interned then losses arising from the death or injury would appear to be losses which, along with those arising from death or injury from actual warfare, should be compensated

My recommendation that the warfare must have been carried on outside of Canada to give rise to a claim is made because no actual warfare by belligerent forces was carried on in Canada. A great range of training operations was carried on but I believe that adequate provision has been made to compensate losses from death or injuries occurring in Canada from training.

Consideration has been given to the question whether compensation, not only of death and personal injury claims but of property claims, should not be confined to cases where the loss or injury arose out of the action of the enemy or out of illegal warfare of the enemy. The earlier Commissions issued after World War I in Canada to Commissioners appear to have contemplated illegal warfare of the enemy as the basis of war claims, and the terms of reference of the Sumner Commission to have contemplated action of the enemy as the basis of such claims. However, if reference is made to Article 232 of the Treaty of Versailles and Annex I (1) of that treaty it will be seen that Germany undertook, at least as far as death and personal injuries were concerned, to make compensation for damage resulting from operations of war carried on by both groups of belligerents wherever arising. It would, I am convinced, be quite impracticable to attempt to confine compensation to cases of enemy action or illegal enemy action, particularly as conditions of warfare in many parts of the world were such that the identity of the forces, agencies or persons causing the injury or loss to Canadians is quite unascertainable. Moreover, it would be discriminatory to do so and my recommendations have been framed accordingly.

The next question is, assuming that compensation is to be paid for losses resulting from deaths or injuries due to these causes, is compensation to be paid from the War Claims Fund for all such deaths or injuries? In my opinion there should be excluded from the deaths or injuries to be compensated for out of the War Claims Fund the death or injury of a person to whom the Pension Act and certain other Acts applied. More accurately, where a claim is for loss resulting from death the rule in my opinion should be that the deceased must have been a civilian (as defined below) at the time of the act complained of as causing the death, and where the claim is for loss resulting from personal injuries the rule should be that the person injured must have been a civilian at the time the personal injury was inflicted. Civilian in this context should be taken as meaning a person who, at the time of the act complained of as causing death or at the time the personal injury was inflicted, as the case may be, was not a member of the armed forces of any country and was not a member of any organization, group or other class to or in respect of all or some members of which benefits have been provided by way of pension, gratuity, or other compensation for injury or death arising out of services in World War II under:

The Pension Act,

The Women's Royal Naval Services and the South African Military Nursing Services (Benefits) Act,

The Civilian War Pensions and Allowances Act,

The Special Operators War Service Benefits Act,

The Supervisors War Service Benefits Act,

or any similar statute or regulation of Canada, Newfoundland, or of any other country, notwithstanding that such pension, gratuity or compensation may not be payable to or in respect of that person although he is a member of the class. Parliament, by the Acts mentioned, has made provision for compensation for death of or injuries to those who were in the armed services and other groups mentioned and should be deemed to have intended such provision to be adequate and exhaustive. Canadians, if any, who served in similar services or other groups established by other countries may be assumed to have accepted the

incidents of service including the conditions of pension entitlement there. Moreover, Parliament having considered the whole question of entitlement to pensions, gratuities and other benefits of Canadians whether in the Canadian or foreign services, should be taken to have covered the field leaving no area for claims on reparations. Obviously if the War Claims Fund were opened to claims for supplements to pensions the administrative difficulties of a Commissioner would be virtually insuperable, his work would parallel or duplicate that of the Canadian Pension Commission and it would be completely impossible to give any estimate whatever of the amounts available for claimants for whom no statutory provision has been made.

The terms of reference recite that claims have been asserted in respect of death, personal injury, maltreatment, and loss of or damage to property. If the two causes enumerated above as necessary to a valid war claim for compensation for death or personal injury be treated and referred to as "war operations" the rule should in my opinion be that the death or injury in order to be compensable must in every case be the direct consequence of war operations. War operations must have been the direct, or in other words the real or effective cause of the loss or injury. In determining whether the war operation is the direct cause of the death or personal injury and whether the death or personal injury is the direct consequence of war operations the Commissioner should be governed by the principles applied by the civil courts in actions of tort or delict. Once it is determined that the death or personal injury is the direct result of war operations the question may arise as to whether some or any of the consequences of that death or injury, or of the act causing it, are so remote as to prevent compensation being properly payable therefor. In a civil action for damages for negligence the damages must not be too remote.

Halsbury, 2nd. Ed., Vol. 23, p. 729, states:

"Remoteness of damage in cases of negligence does not depend on whether or not the consequences of the negligent act could have been reasonably foreseen, nor on the length of time intervening between the negligent act and the injury and its consequences, but it does depend on whether or not there is an absence of direct, necessary, and natural sequence between them, and to this extent the inquiry is similar, though subsequent, to that of whether the negligent act is the effective cause of the injury. It is for the judge to decide whether or not the damage is too remote."

Similarly damage which is too remote a consequence of war operations should not be compensable. And the Commissioner in deciding whether it is too remote should be governed by the principles which apply in the civil courts in actions for damages for negligence.

But there may be cases where personal injury is the direct result of war operations and where the damage would not be regarded by the civil courts as too remote but where, nevertheless, the injury should, in my opinion, not be compensable to the extent to which damages would be recoverable in a civil action for tort. I say this because much consideration has led me to the conclusion that the established rules laying down the measure of damages for tortious acts in the courts are in many respects incapable of application, justly, to war claims. I shall, therefore, state the respects in which these should be modified in their new application and, as completely as possible, the rules for measurement of the compensation which should apply to death and personal injury claims. This modification of the principles determining the measure of damages will work in some instances in favour of and in some cases against the claimants.

Death Claims

Many claims have been made and doubtless others will be made for compensation for the death of those who were drowned as a result of war operations at sea. The claimants in most cases are the dependents of the deceased. There are or may be other claims for compensation for death by bombing, maltreatment, exposure and other acts or conditions which either were or are the direct result of war operations. The Fatal Accidents Act of 1846 (Lord Campbell's Act) made death a cause of action for certain torts and the principles of that Act have been adopted in all jurisdictions in Canada. Sections 1 and 2 of the Fatal Accidents Act are as follows:

"1. Whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused . . . and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct."

The words "parent" and "child" as used in the Fatal Accidents Act have, by judicial interpretation, and amendments in some jurisdictions, been given an extended meaning.

The counterpart of the Fatal Accidents Act in the Civil Code of Quebec is Article 1056, the relevant parts of which are as follows:

"In all cases where the person injured by the commission of an offence or a quasi-offence dies in consequence, without having obtained indemnity or satisfaction, his consort and his ascendant and descendant relations have a right, but only within a year after his death, to recover from the person who committed the offence or quasi-offence, or his representatives, all damages occasioned by such death . . .

In all cases no more than one action can be brought in behalf of those who are entitled to the indemnity and the judgment determines the proportion of such indemnity which each is to receive.

These actions are independent of criminal proceedings to which the parties may be liable and are without prejudice thereto."

Both the Fatal Accidents Act and Article 1056 C.C. provide that only one action can be brought on behalf of the dependents of the deceased. In the common law jurisdictions this is normally brought by the executor or administrator of the deceased, but if there is none, or if he delays in bringing it, the action may be brought in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of the executor or administrator, and every action so to be brought shall be for the benefit of the same person or persons as if it were brought by and in the name of such executor or administrator. The rule that only one action can be brought on behalf of those entitled applies whether the action is brought by the executor or administrator and whether in a common law jurisdiction or in Quebec and the judgment of the court determines the proportion of the damages which each of those entitled shall receive.

The principle of the Fatal Accidents Acts being that of giving to dependents statutory compensation for the financial loss which they have sustained through the death, the measure of damages is the pecuniary loss suffered by the dependents as a result of the death. No damages can be given for the mental sufferings they have undergone or by way of *solatium* for their wounded feelings or the pain and suffering of the deceased. The pecuniary loss in question means the actual financial benefit of which the dependents have in fact been deprived, whether the benefit was a result of legal obligation or of what may reasonably have been expected to take place in the future. It is the amount of the pecuniary benefit which it is reasonably probable the dependents would have received if the deceased had remained alive. The pecuniary advantage need not have been received in the form of money or goods but may have been derived from services rendered by the deceased. A reasonable expectation of pecuniary benefit can be established by showing that the deceased has in the past contributed to the support of the dependents and from that fact it can be inferred that the support would be continued in the future. If the deceased had not attained his full earning capacity, damages can be given on the assumption that his contributions would increase as his earning capacity increased. It is not necessary that the deceased should have been actually earning wages at the death, if there is a reasonable expectation that wages will be earned in the future with the result that financial benefit will accrue to the dependents. The mere existence of the relationship of husband and wife or parent and child is not enough to show pecuniary loss and does not even raise a presumption of such loss. Property left by the deceased by his will so as to benefit his dependents must be taken into account in ascertaining the damages and so must money coming to the dependents under a settlement or under a partnership or other agreement in consequence of the death. If the will of the deceased so disposes of his property that although all his property goes to the dependents it is not divided amongst them according to the extent of their individual dependency, damages can be awarded to those dependents who have suffered loss.

The whole question of taking into account benefits from the death in estimating the pecuniary loss of a dependent resulting from the death will be very important if my recommendation below that claims for compensation for personal injuries survive for the benefit of the estate is adopted. A sustains personal injuries as a result of war operations. He lives for a time then dies as a result of those war operations. At the time of his death he had a claim which, if he could have got it dealt with, would have been a good and valid war claim for compensation for personal injuries. My recommendation will be that, subject to the conditions mentioned below, it survive for the benefit of his estate. The claim of a dependent of A based on the death of A is not affected by the survival of the personal injuries claim for the benefit of the estate if that dependent does not share in the estate (as e.g. if he gets nothing under A's will). But if he obtains a benefit from the deceased's estate that benefit must be taken into account in determining the pecuniary loss which he has suffered from the death of A. The damages under the Fatal Accidents Acts are given to compensate the recipient on a balance of gains and losses for the injury sustained by the death. So when I recommend pecuniary loss as the measure of damages on death claims below I mean loss after deduction of the dependent's interest, under the will or intestacy as the case may be, in the compensation payable for personal injuries to the deceased.

I have given some of the principles applied in determining whether there is pecuniary loss as a result of the death and its extent. Those I have mentioned are, of course, illustrative rather than exhaustive. I recommend that in dealing with claims based on the death caused by war operations the

Commissioner admit claims by dependents who prove pecuniary loss resulting from the death in accordance with the principles established under the Fatal Accidents Acts subject to the following provisions:

1. Dependent means the husband, wife, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grand-daughter, stepson or stepdaughter, of the deceased, person of whom the deceased was the adopted child, person who stood *in loco parentis* to the deceased, adopted child of the deceased or person to whom the deceased stood *in loco parentis*, who has suffered pecuniary loss as a result of the death of the deceased.

2. Any dependent may claim on his own behalf and more than one may join in claiming. There seems to be little reason for providing that no more than one claim may be made in respect of a death or for providing that claims may be made by executors and administrators. Of course, the Commissioner may wish before hearing a claim to require notice to the executor or administrator, if any, or to any other dependent.

Reference is made above to the taking into account of benefits from the death in estimating the pecuniary loss of a dependent resulting from the death. In many, if not all, Canadian jurisdictions it has been provided that in assessing damages in actions under the Fatal Accidents Acts there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance. I recommend that the principle of such provisions be applied to the assessment of what, in the light of the foregoing, may be referred to as Fatal Accidents Acts claims against the War Claims Fund. In this respect I would treat (a) life insurance policies differently from (b) policies of insurance against accident and against property loss. As will be seen it will be recommended that the moneys paid under (b) be taken into account in estimating the pecuniary loss of claimants. But there are reasons why life insurance should not be taken into account in computing the pecuniary loss arising from death resulting from war operations. These reasons were well set out as follows by the United States-German Mixed Claims Commission, which sat after World War I, in that part of its Decisions and Opinions quoted in Whiteman, Vol. 1, pp. 683 and 684. The Commission said:

"Counsel for Germany insist that in arriving at claimants' net loss there should be deducted from the present value of the contributions which the deceased would probably have made to claimants had he lived all payments made claimants under policies of insurance on the life of the deceased. The contention is opposed to all American decisions and the more recent decisions of the English courts. The various reasons given for these decisions are, however, for the most part inconclusive and unsatisfactory. But it is believed that the contention here made by the counsel for Germany is based upon a misconception of the essential nature of life insurance and the relations of the beneficiaries thereto.

Unlike marine and fire insurance, a life insurance contract is not one of indemnity, but a contract absolute in its terms for the payment of an amount certain on the happening of an event certain—death—at a time uncertain. The consideration for the claimants' contract rights is the premiums paid. These premiums are based upon the risk taken and are proportioned to the amount of the policy. The contract is in the nature of an investment made either by, or in behalf of, the beneficiaries. The claimants' rights under the insurance contracts existed prior to the commission of the act complained of, and prior to the death of deceased. Under the terms of the contract these rights were to be exercised by claimants upon the happening of a certain event. The mere fact that the act complained of hastened that event can not inure to Germany's benefit, as there was no uncertainty as to the happening of the event, but only as to the

time of its happening. Sooner or later payment must be made under the insurance contract. Such payment of insurance far from springing from Germany's act, is entirely foreign to it. If it be said that the acceleration of death secures to the claimants now what might otherwise have been paid to others had deceased survived claimants, and that therefore claimants may possibly have benefited through Germany's act, the answer is that the law will not for the benefit of the wrongdoer enter the domain of speculation and consider the probability of probabilities in order to offset an absolute and certain contract right against the uncertain damages flowing from a wrong."

If the proceeds of life insurance policies are not to be taken into account in computing the pecuniary loss arising from the death it follows that they should not be regarded as a species of satisfaction otherwise provided for.

Personal Injury Claims

Many claims have been made and others may be made for compensation for personal injuries caused by war operations. It is desirable at this point to discuss the principles which should apply to determining the amount of compensation for these injuries. It must always be kept in mind, of course, that the injuries themselves to be compensable must be a direct result of war operations and that no compensation can be paid for damage which is too remote. But if the amount of compensation were determined on the principles governing the measurement of damages in an action of tort or delict it could, and in proper cases would, include compensation for more than the actual pecuniary loss. A question that arises is whether awards out of the War Claims Fund should be compensatory of pecuniary loss only or whether they should in some cases include sums in the nature of punitive damages or damages other than compensation for pecuniary losses. For reasons to be given, I am of opinion that they should be compensatory of pecuniary loss only and I shall now state the principles which I think should apply to the measurement of the compensation. These principles should extend to claims for compensation for personal injuries caused by maltreatment but they have no application to claims for compensation for maltreatment *per se*, which will be dealt with separately.

In my view the general principle upon which compensation for personal injuries resulting from war operations should be awarded is that the compensation should be the amount that would be allowed in accordance with the ordinary principles applied in our civil courts as *pecuniary loss* resulting from the injuries. The use of pecuniary loss as the sole basis for compensation is a departure from the rules normally applied in the courts in actions of delict or tort. Where a person is injured by the negligence of another he is entitled to damages for the injuries, not only in respect of pecuniary loss, but of certain other matters. Charlesworth on Negligence, 2nd. Ed., p. 559, summarizes the grounds for claim as follows:

"In actions for damages for personal injuries, the matters to be taken into account in ascertaining the damages are: the pain and suffering endured, past, present and future, the inconvenience and loss of enjoyment of life sustained, past, present and future, injury to health, any shortening of the expectation of life, and the present and future financial loss."

In my opinion, there should be excluded as grounds for compensation from the War Claims Fund claims in respect of pain and suffering, inconvenience, loss of enjoyment of life, injury to health not resulting in impairment of earning capacity, and any shortening of expectation of life. It does not seem appropriate that one group of individuals should be compensated for pain and suffering sustained in time of war when so much pain and suffering has been sustained

by many members of the community for which no compensation is payable. The same is true of loss of enjoyment of life, injury to health not resulting in impairment of earning capacity and shortening of expectation of life. In each of these cases there is a common element, namely, they do not involve pecuniary loss to the claimant. They represent an attempt made by the law in ordinary circumstances to compensate in a pecuniary manner for losses of intangible human assets. It is to be borne in mind also that there is a difference in principle between the position of a claim for damages for tort and a claim for loss resulting from the war. In claims for tort the law is endeavouring to reimburse one person for all losses sustained by him as a result of the fault of another. Since the latter party is at fault he should reimburse the former for all forms of loss. With respect to war claims, however, the principle that appears to be followed is to reimburse individuals for special losses peculiar to them. A distinction must be drawn between the losses which are special or peculiar to the claimant and losses of the kind which fall generally on many members of the community. Pain and suffering, loss of enjoyment of life, and the other intangible losses I have mentioned, are suffered to a greater or lesser extent by many members of the community in time of war. They must, therefore, be excluded from the category for which compensation is to be paid.

Once these elements of loss are excluded, in my view it is proper to apply the ordinary principles of our civil law in determining the pecuniary or financial loss, past, present and future, resulting from an injury of the class mentioned above, for which compensation is to be paid. These principles embrace two categories of persons, namely, the persons who were injured, and other persons who sustained loss by reason of injury to the injured person.

The injured person should be compensated for all "special" and "general" damages based on financial loss, e.g. medical, hospital, nursing expenses, necessary employment of extra assistance, loss of earnings down to the time of adjudication, loss of earning capacity for the future and all other pecuniary losses which would be compensated by damages in a civil action in the courts.

As regards persons other than the injured person, the same principles as are applied in our civil courts should apply in so far as they apply to pecuniary losses. The best example of this type of claim is a claim by a husband for medical and other expenses to which he has been put as a result of personal injuries inflicted on his wife. As regards special damages, I adopt as applicable to war claims the following principle stated by Charlesworth, p. 575:

"The principle is not confined to husband and wife, but extends to parent and child and to all cases in which the person suffering the special damage is in fact maintaining, in whole or in part, the injured person. The exact boundary line between gratuitous assistance given by a stranger, which is not recoverable, and the assistance given by a parent, relative, person *in loco parentis*, guardian, master or other person, which is recoverable, has not been determined, but it would seem that a person who has in fact incurred expense in providing for the cure and restoration to health of the injured person will be entitled to recover such expense, provided that the expense was reasonably incurred and that it was reasonable that it should be incurred by the person claiming it."

As regards claims by husbands for compensation for the pecuniary loss suffered by them from being deprived of their wife's services, I would also apply the principles applied in the civil courts. But for the same reason that I would not allow claims for pain and suffering and loss of expectation of life, I would not allow a claim made by a husband for loss of *consortium* apart from loss of services or any other non-pecuniary loss arising from personal injuries to his wife.

With regard to those parts of awards made up of expenditures made by the injured person or the claimant as a result of the personal injuries (analogous to special damages), it will be recommended that they bear interest from the time made to settlement. But compensation for other pecuniary losses suffered between the date of the injury and the date of adjudication such as the estimated loss of earnings during that period and for future losses of earnings or earning capacity (all of which are analogous to general damages) will bear interest from the date of the injury. It is, therefore, important that the adjudicating Commissioner in determining the amount of compensation for pecuniary loss other than that analogous to special damages, while taking into account events and circumstances between the infliction of the injury and the time of adjudication, limit the amount recommended to an amount which, if it had been paid at the time of injury, would have been a fair compensation to the claimant for future pecuniary loss.

As some of the claimants for compensation for personal injuries have died since these injuries were sustained and others may die before settlement of their claims, the question arises whether their claims should survive for the benefit of their estates, or for the benefit of their dependents or otherwise.

In the civil courts a maxim is often quoted: *Actio personalis moritur cum personâ*. In some jurisdictions in Canada a cause of action for damages for personal injuries or death dies with the person. In others it survives for the benefit of the estate. There are, I think, good reasons why war claims for compensation for personal injuries and death should survive. Many of these claims arise from injuries inflicted or death occurring as long ago as 1939. While there may be little injustice in permitting the cause of action to die with the person, if the person had an opportunity of securing compensation while alive, the injustice is greater if no such opportunity existed. Then too, if, as I recommend, compensation be limited to pecuniary loss the reason for dealing with a war claim for personal injuries or death differently than with a claim for loss of or damage to property is not obvious. I am of the opinion, therefore, that such claims should survive. The next question is whether they should survive to the estate or in some way which will give the dependents more protection and eliminate the possibility that creditors, distant relatives and legatees who are strangers and others who would appear to have little moral claim on the War Claims Fund will receive a share of it.

I have come to the conclusion that the claims should survive for the benefit of the estate for the following reasons:

First, of the small number of cases where the person who first had the claim for compensation for personal injuries or death had died or will die before settlement, it is probable that the great majority are cases where survival of the claim to the estate would be substantially the same in its practical effect as survival to the dependents.

Secondly, if claims for loss of or damage to property are dealt with, as respects survival, as if they were actions for damages for loss of or damage to property—and I recommend that they be so dealt with—then there is little reason for treating death and personal injury claims, when the compensation is based upon pecuniary loss only, in a different way.

A third and somewhat minor reason why survival of claims should be for the benefit of the estate rather than for dependents or some class of them is that if the claim passes to the estate principles worked out by the English courts in interpreting and applying the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act of 1934 and by the Canadian courts applying similar legislation in Canada may be very helpful to the Commissioner. (See, for example, *Ponyicki v. Sawayama* [1943] S.C.R. 197). They will provide him with authority for dealing with cases where the death, though not immediate,

has been caused by war operations and there are two claims, one by dependents for pecuniary loss resulting from the death, the other by the estate for compensation for personal injuries sustained by the deceased. The principle is well stated by Charlesworth, p. 581, as follows:

" . . . if the damages awarded under the Law Reform Act, 1934, go, either on an intestacy or under the terms of the deceased's will, to any person who is a dependent under the Fatal Accidents Acts, they will *pro tanto* reduce the amount payable to that dependent under the latter Acts. This is because in estimating pecuniary loss regard must be had to any benefits, other than money payable under a contract of insurance, each dependent derives from the death of the deceased."

In computing the pecuniary loss to a claimant caused by personal injuries, should sums which he has been paid under policies of accident, sickness or similar insurance be taken into account? After World War I they were: (Report of Commissioner Friel dated December 14, 1927, Reparations, Vol. I, p. 18). In view of this fact and the distinction between the nature of such payments and those of life insurance suggested by the passage quoted above from the Opinions of the United States-German Mixed Claims Commission I think the rule followed after World War I should be followed. I may add that the files disclose no collection of accident or similar insurance moneys on account of injuries resulting from war operations.

On any claim surviving to an estate for compensation for personal injuries to the deceased the compensation should be calculated without reference to any loss or gain to the deceased's estate consequent on the death (except that account should be taken of sums payable to the estate under policies of accident as distinguished from life insurance).

There may be some uncertainty as to what is meant above by the recommendation that a claim should survive for the benefit of the estate. My meaning is that the claim, to the extent that it would have been valid and admissible if the deceased could have got it dealt with in accordance with the principles of these recommendations just before his death, should survive as if it were a cause of action for damages vested in the deceased at the time of his death which survives for the benefit of his estate.

The question as to whether there should be ceilings on awards for death and personal injuries has been considered and will be dealt with in the section of the report below which deals with priorities. That section should be read with this section of the report.

Maltreatment

Many claims have been made in respect of maltreatment and it is now necessary to consider whether, within what limits, and to what extent they should be admitted for compensation. Maltreatment cannot be accurately defined, but it should be observed at once that it does not include mere hardship resulting from war or wartime activities, for example, exposure at sea or on land even though this results directly from belligerent armed action. Nor can I find that when maltreatment has been put forward as a ground for compensation after a war it has even been regarded as including violation of the rules of warfare on land or sea or in the air except in cases where there has been internment or detention by the enemy. By usage the term is confined to maltreatment of persons either interned or detained by enemy authorities, military or civil. The person maltreated may at the time have been either a civilian or a member of the armed forces. The claims in respect of alleged maltreatment of members of the Canadian armed forces will frequently be

referred to below as prisoner of war claims, and those for alleged maltreatment of Canadians who were not members of the armed forces of Canada as civilian claims. Most if not all of the claims filed with the Canadian Government in respect of maltreatment in World War II have been for compensation for maltreatment in internment camps, a term which will be used to describe all camps used by ex-enemy powers for the purpose of restraining the liberty of movement of Allied nationals whether civilians or not. But there seems to be no reason why maltreatment in detention by enemy authorities other than internment should be dismissed as non-compensable if it would be regarded as compensable where there was internment. The word "detention" is here used as including confinement or imprisonment, as well as enforced residence in an enemy or enemy-occupied country. Mere internment has never been and should not be regarded as, in itself, constituting maltreatment. Under international law it is recognized as quite proper for a belligerent to intern enemy aliens. (Wheaton on International Law, 6th Ed., Vol. II, p. 706). The internment and confinement of prisoners is similarly recognized. Mere internment has never been recognized as a ground for a claim for reparations in treaties or otherwise by international usage. "Internment in itself must be regarded as permissible." (First report, Sumner Commission, p. 13). Moreover, it has never been recognized domestically in Canada as giving rise to claims for compensation. The claims which have been made for loss of income during or as a result of internment should, therefore, not be confused with maltreatment claims, nor should they be allowed. It may be argued that if compensation is to be paid not on the basis of wrong done but on the basis of special losses suffered, the propriety or permissibility of internment is irrelevant. But departure from the established principle that compensation should not be paid for internment *per se* would be too great a departure for me to recommend. Moreover, internment (without maltreatment) can hardly be regarded as inflicting a special loss but rather one which may be common to the rank and file of Canadians in enemy or enemy-occupied countries. It has an upsetting effect on the lives of those interned but the effect is of the kind flowing to large classes of Canadians (in this case those in enemy or enemy-occupied countries) from the war itself. Indeed in many instances the lot of those interned was better than that of those left at large. The British hand-book, to be referred to, makes this abundantly clear (pp. 82 and 83).

The only cases on the files of internment or detention during which maltreatment is alleged to have taken place are those of internment or detention by the Japanese and Germans. My recommendation is that maltreatment during internment or detention by authorities of an enemy or an ally of an enemy be treated as a ground for compensation. It will, therefore, be necessary to refer to camps administered by Italy and certain other countries. As indicating the scope of the problem raised by the maltreatment claims some estimate may be given of the number of civilians and prisoners of war interned by the German and Italian authorities and by the Japanese authorities. While an estimate can only be approximate, based as it is largely on examination of the files, it may be considered that there were about 1,200 Canadian civilians interned by Germany and Italy in enemy or enemy-occupied territory. In addition there were on March 31, 1945, about 6,500 Canadian prisoners of war in German hands. It is probable that some of these had before the armistice with Italy in September, 1943, been interned in Italy.

Examination of the files indicates that approximately 800 Canadian civilians, men, women and children, were interned in camps operated by the Japanese both in Japan and Japanese-administered territories, and in Hong Kong, Shanghai and occupied China, Malaya, the Netherlands East Indies, Burma, the Philippines, and the British sections of Borneo. In addition there were camps operated by the Governments of Indo-China and Siam and it will be a question of evidence whether and during what periods these camps were in

substance and effect under the control of the Japanese. This question may be important as it will be my recommendation that no claims for maltreatment in the Far East be paid on a *per diem* basis unless the camps were at the time of the alleged maltreatment operated openly or in effect by the Japanese. There is no evidence that the French in Indo-China or the Siamese maltreated internees, although instances of such maltreatment may come to light. The publication entitled "The Work of the Prisoners of War Department during the Second World War" issued for official use by the British Foreign Office in August, 1950, which I shall refer to as the British hand-book, states with regard to Indo-China that "so far as they could, the French tried to make life for these internees tolerable, and in so doing they frequently risked incurring the anger of their Japanese masters" (p. 155), and with regard to the civilian camp in Bangkok that "on the whole, however, there was little ground for complaint and the Siamese showed themselves both humane and co-operative" (p. 155). The British hand-book, however, indicates that there was brutal treatment by the Japanese military authorities in Siam of British and Allied prisoners of war, and that the Siamese maintained that these prisoners were the sole charge of the Japanese. As to Canadian prisoners of war in the Far East, approximately 1,750 members of the Canadian armed services were interned in camps in some or all of the countries in the Far East mentioned above. Of these nearly 300 died in internment. The liberation of the survivors took place in September, 1945, at the end of the war. It should not be assumed that there were no Canadians at large in Germany, Italy or Japan or in the countries occupied by these powers during the war. There may have been many. And there were apparently many cases of enforced residence under enemy supervision, such as the so-called house arrest cases.

In considering maltreatment it is necessary to refer to the International Convention of July 27, 1929, relative to the treatment of prisoners of war, commonly referred to as the Geneva Convention. This Convention was signed by the representatives of 47 countries including Germany, Italy and Japan. Article 92 was as follows:

"The present Convention shall enter into force six months after at least two instruments of ratification have been deposited. Thereafter it shall enter into force for each High Contracting Party six months after the deposit of its instrument of ratification."

Article 95 was as follows:

"A state of war shall give immediate effect to ratifications deposited and to accessions notified by the belligerent Powers before or after the commencement of hostilities. The communication of ratifications or accessions received from Powers in a state of war shall be effected by the Swiss Federal Council by the quickest method."

Although ratified by Italy (on March 24, 1931) and by Germany (on February 21, 1934) the Geneva Convention was never ratified by Japan. However, following consultations between the United Kingdom and the United States in which various Commonwealth governments participated, the United Kingdom at the end of 1941 requested the Argentine Government to inform the Japanese Government that the Governments of the United Kingdom, Canada, Australia and New Zealand were observing the provisions of the Geneva Convention so far as it concerned Japan and to ask assurance that Japan would do likewise. On December 31, 1941, the Canadian Secretary of State for External Affairs instructed the Canadian Minister to Argentina to confirm the representations made by the United Kingdom on behalf of Canada. The Japanese Government replied that the Imperial Government had not ratified the agreement concerning the treatment of prisoners of war dated July 27, 1929, and therefore it would not be bound to any extent by the said agreement but would apply *mutatis*

mutandis the provisions of the agreement toward the British, Canadian, Australian and New Zealand prisoners of war under Japanese control and that the Imperial Government would consider the national and racial manners and customs under reciprocal conditions when supplying clothes and provisions to prisoners of war. The British hand-book refers to this interchange of Notes as follows:

"When, in January 1942, we made enquiries through the Argentine Government, then protecting British interests, we were informed that the Japanese were willing, *mutatis mutandis*, to observe the Prisoners of War Convention which they had never ratified. It was almost at once clear that this meant that they would observe it, if it suited them to do so, and that they would apply it as they saw fit. On the other hand, they were always ready to complain of the most trivial infringement of the Convention by us or by our Allies." (p. 127).

It is a well-established principle of international law that a treaty whose text stipulates that ratification is necessary must be ratified before it is binding. It follows that there was no binding agreement on the part of Japan to observe the Geneva Convention with any of the countries which received the assurance in 1942 from the Japanese Government. The maltreatment claims against Japan can, therefore, not be based upon a legalistic interpretation of the Geneva Convention. Neither in my opinion should maltreatment claims against Germany and Italy be based upon such an interpretation for reasons to be given.

A brief reference to the provisions of the Geneva Convention is now necessary. The Geneva Convention provides that prisoners of war shall at all times be humanely treated and protected particularly against acts of violence, from insults and from public curiosity, and that measures of reprisals against them are forbidden (Article 2). It has 97 articles in all, many of them containing detailed provisions as to capture, evacuation of prisoners of war, prisoners of war camps, installation of camps, food and clothing of prisoners of war, hygiene in camps, internal discipline of camps, officers and persons of equivalent status, pecuniary resources of prisoners of war, transfer of prisoners of war, work of prisoners of war, relations of prisoners of war with the exterior, relations between prisoners of war and the authorities, penal sanctions with regard to prisoners of war, disciplinary measures, judicial proceedings, repatriation and accommodation in neutral countries, liberation and repatriation at the end of hostilities, deaths of prisoners of war, and so forth.

It would not, in my opinion, be possible to treat every violation of the Geneva Convention as maltreatment; indeed, the British hand-book indicates that the Government of the United Kingdom found it impracticable to comply in every respect with the Geneva Convention.

Mr. Errol M. McDougall, Commissioner appointed after World War I, in his memorandum on maltreatment dated January 13, 1932, in dealing with the Hague Regulations which enacted rules regarding captivity and declared the humane principles relating to the treatment and care of prisoners of war, said: "Ideal as may be the conditions of captivity provided in the foregoing rules, it is doubtful whether any captor has been, or will be, able to conform completely to this desirable standard. The inevitable exigencies of war bring about departure from the principles stated." (p. 8). Mr. McDougall made no attempt to define the precise meaning of the word "maltreatment" as used in the Treaty of Versailles although he did direct attention to certain acts which in his opinion did not *per se* constitute maltreatment. The following paragraphs from his memorandum (p. 7) give some indication of his approach:

"Diverse and various have been the incidents of maltreatment urged in support of the numerous claims. While it is not opportune to attempt an exhaustive enumeration of what acts constitute maltreatment, it may, by

way of illustration, be useful to direct attention to certain acts which do not, *per se*, constitute maltreatment. Thus, poor food conditions in Germany, resulting in impaired health, unless deliberately and unreasonably imposed upon a claimant by the authorities, cannot be regarded as maltreatment. Germany's inability to obtain better food, at least during certain stages of the war, was notorious and obtained throughout the country. A hardship arising from necessity and which was borne alike by the captured and the captors does not constitute "maltreatment".

Again, many claimants complain of being inoculated by the German physicians. The fact that the German authorities inoculated and vaccinated prisoners would seem to imply that they were seeking to give them all proper and necessary attention, rather than to maltreat them. Another frequent ground of complaint is the use of paper bandages by the German hospital authorities in dressing the wounds of prisoners, but there is no evidence that any other bandages were available, and it appears that the German authorities were forced to use paper bandages in the dressing of the wounds of German soldiers. This was one of the hardships of war in which claimants were engaged as combatants. Many prisoners who attempted to escape, upon recapture, were severely handled and subjected to solitary confinement under very trying conditions. Provided such punishment was inflicted in accordance with military law and did not go beyond reasonable bounds, it cannot furnish ground of complaint. Germany was entitled to hold her prisoners and to apply to them such disciplinary measures as each case required. To shoot and kill or maim a prisoner in the act of escaping, is not illegal and to punish him, even severely, upon recapture, cannot be termed "maltreatment" unless the punishment, by its violence and inhumanity transgresses the rules applying to the treatment of prisoners by civilized nations. International law recognizes that a prisoner may be "confined with such rigour as is necessary for his safe custody." (Hall's International Law, 8th. Ed., p. 487).'

The United States War Claims Commission in its report to the President dated March 31, 1950, said:

"The existing body of international law is reasonably clear on such matters as the violence permissible to belligerents, the conduct of seizure, the limitation of devastation, retaliation and ruses, the treatment of enemy aliens and alien property, and the treatment of the wounded and prisoners of war. It is the behaviour falling outside of these and similar well-defined limitations, however, which creates difficulties in the classification and evaluation of war claims. The source of international law, therefore, must be found in those principles on which civilized peoples achieve a consensus either explicitly in international agreements among nations or implicitly in convictions found to be generally recognized as law but not explicitly promulgated as such." (p. 7).

It is clear that there may be such a marked departure from humane treatment that there would be a consensus among civilized peoples that it constitutes maltreatment. While a comprehensive list of acts constituting maltreatment would be impossible to compile, many instances appear from the judgment of the International Military Tribunal for the Far East which may now be referred to.

After hearing a great deal of evidence of alleged war crimes against a number of Japanese accused this Tribunal delivered its judgment in November of 1948. Pages 395 to 448 in Chapter VIII deal with atrocities. The judgment makes it clear that the regulations for the administration of civilian internment camps by the Japanese were not materially different from those providing for the administration of prisoner of war camps. Both were administered by

military commanders who received their instructions through Imperial ordinances and regulations issued by the War Ministry. While the judgment is replete with macabre descriptions of a wide range of acts of inhumanity such as death marches, massacres, and excessive and unlawful punishments, it is probably sufficient to quote the opening page and extracts from the portions dealing with torture, food and clothing, medical supplies, visits by the Protecting Power, and mail. The opening page reads as follows:

"After carefully examining and considering all the evidence we find that it is not practicable in a judgment such as this to state fully the mass of oral and documentary evidence presented; for a complete statement of the scale and character of the atrocities reference must be had to the record of the trial.

The evidence relating to atrocities and other Conventional War Crimes presented before the Tribunal establishes that from the opening of the war in China until the surrender of Japan in August 1945 torture, murder, rape and other cruelties of the most inhumane and barbarous character were freely practiced by the Japanese Army and Navy. During a period of several months the Tribunal heard evidence, orally or by affidavit, from witnesses who testified in detail to atrocities committed in all theaters of war on a scale so vast, yet following so common a pattern in all theaters, that only one conclusion is possible—the atrocities were either secretly ordered or wilfully permitted by the Japanese Government or individual members thereof and by the leaders of the armed forces.

Before proceeding to a discussion of the circumstances and the conduct of the accused in relation to the question of responsibility for the atrocities it is necessary to examine the matters charged. In doing so we will in some cases where it may be convenient refer to the association, if any, of the accused with the happenings under discussion. In other cases and generally, as far as it is practicable, circumstances having relevance to the issue of responsibility will be dealt with later.

At the beginning of the Pacific War in December 1941 the Japanese Government did institute a system and an organization for dealing with prisoners of war and civilian internees. Superficially, the system would appear to have been appropriate; however, from beginning to end the customary and conventional rules of war designed to prevent inhumanity were flagrantly disregarded.

Ruthless killing of prisoners by shooting, decapitation, drowning, and other methods; death marches in which prisoners including the sick were forced to march long distances under conditions which not even well-conditioned troops could stand, many of those dropping out being shot or bayoneted by the guards; forced labor in tropical heat without protection from the sun; complete lack of housing and medical supplies in many cases resulting in thousands of deaths from disease; beatings and torture of all kinds to extract information or confessions or for minor offences; killing without trial of recaptured prisoners after escape and for attempt to escape; killing without trial of captured aviators; and even cannibalism: these are some of the atrocities of which proof was made before the Tribunal.

The extent of the atrocities and the result of the lack of food and medical supplies is exemplified by a comparison of the number of deaths of prisoners of war in the European Theater with the number of deaths in the Pacific Theater. Of United States and United Kingdom forces 235,473 were taken prisoners by the German and Italian Armies; of these 9,348 or 4 per cent died in captivity. In the Pacific Theater 132,134 prisoners were

taken by the Japanese from the United States and United Kingdom forces alone of whom 35,756 or 27 per cent died in captivity."

On torture the judgment has this to say:

"The practice of torturing prisoners of war and civilian internees prevailed at practically all places occupied by Japanese troops, both in the occupied territories and Japan. The Japanese indulged in this practice during the entire period of the Pacific War. Methods of torture were employed in all areas so uniformly as to indicate policy both in training and execution. Among these tortures were the water treatment, burning electric shock, the knee spread, suspension, kneeling on sharp instruments and flogging."

Dealing with food and clothing the judgment states:

"The Japanese Government promised early in 1942 to take into consideration the national customs and racial habits of the prisoners of war and civilian internees in supplying them with food and clothing. This was never done. Regulations in force at the time this promise was made required that camp commandants in supplying prisoners of war and internees with food and clothing should be guided by the Table of Basic Allowances governing the supply of the Army. The commandants were authorized to determine the amount of the allowance to be made to the inmates of the camps but were directed to make such determination within the limits prescribed in the Table of Allowances. These Regulations, insofar as they affected diet, were interpreted as forbidding the prisoners and internees sufficient food, even when other food existed in the vicinity of the camps. This rule was followed even when the inmates of the camps were dying in large numbers from malnutrition. The amount and kind of food prescribed by the Table of Allowances was not materially changed during the war, except to reduce the amount prescribed, although it soon became apparent to those in command that due to different national dietary customs and habits, the prisoners and internees could not subsist on the food supplied. On 29 October 1942, orders were issued to all camp commandants that "in view of the consumption of rice and barley by workers in heavy industries in Japan," the ration for prisoners of war and civilian internees who were officers or civil officials should be cut so as not to exceed 420 grams per day. In January 1944, this ration of rice was further cut to a maximum of 390 grams per day. As the inmates of the camps began to suffer from malnutrition, they fell easy prey to disease and were quickly exhausted by the heavy labour forced upon them. Regardless of this, the commandants of the camps enforced Tojo's instructions that those who did not labour should not eat and still further reduced the ration and in some cases withdrew it entirely from those who were unable to labour because of illness or injury.

The Regulations provided that the prisoners of war and civilian internees should wear the clothing formerly worn by them, that is to say the clothing they were wearing when captured or interned. This Regulation was enforced by the camp commandants with the result that in many of the camps the inmates were in rags before the war ended. It is true that the Regulation allowed the camp commandants to lend certain items of clothing in cases where the clothing formerly worn by the prisoners or internees was unfit, but this appears to have been used only in rare cases."

On medical supplies the judgment states:

"The Japanese Army and Navy were required by their regulations to keep on hand and in storage a supply of medicine and medical equipment sufficient for one year's use. This was done in many instances by

confiscating Red Cross drugs and medical supplies, but the supplies were kept in storage or used mostly for the benefit of Japanese troops and camp guards. The prisoners of war and civilian internees were rarely furnished medicines and equipment from these warehouses. At the time of surrender, large quantities of these supplies were found stored in and around prisoner of war and civilian internment camps in which prisoners and internees had been dying at an alarming rate for lack of such supplies.

Suzuki, Kunji, who served as a staff officer of the Eastern Military District on Honshu Island under Dohihara and other Commanders, testified before this Tribunal. Suzuki admitted that he authorized chiefs of camps and guards at the detention camps in his district to confiscate Red Cross parcels intended for prisoners of war. The evidence shows that this was common practice at the camps located in Japan as well as in Japan's overseas possessions and in the occupied territories. Incidentally Suzuki also admitted that he knew that his guards were beating and otherwise ill-treating the prisoners.

Failure to afford adequate or any medical supplies to prisoners of war and civilian internees was common in all theatres of war and contributed to the deaths of thousands of prisoners and internees."

In commenting on the submission which had been made by counsel for the defence that the insufficiency of food and medical supplies in many of the instances established was due to disorganization and lack of transport facilities resulting from the Allied offensives, the judgment states:

"Whatever merit that argument has in its narrow application it loses effect in face of the proof that the Allied Powers proposed to the Japanese Government that they should send, for distribution among prisoners of war and internees the necessary supplies; which offer was refused by the Japanese Government."

One way of attempting to conceal the maltreatment of prisoners of war and internees was in hampering and obstructing the Protecting Power. This is made clear in the following passage from the judgment:

"The Japanese Government condoned ill-treatment of prisoners of war and civilian internees by failing and neglecting to punish those guilty of ill-treating them or by prescribing trifling and inadequate penalties for the offence. That Government also attempted to conceal the ill-treatment and murder of prisoners and internees by prohibiting the representatives of the Protecting Power from visiting camps, by restricting such visits as were allowed, by refusing to forward to the Protecting Power complete lists of prisoners taken and civilians interned, and ordering the destruction of all incriminating documents at the time of the surrender of Japan."

After meeting with continuous evasions on the part of the Japanese Government on the subject of visits to camps, matters came to a head in the following Note, dated March 30, 1944, from the Swiss Minister to Foreign Minister Shigemitsu:

"You know that I am not satisfied with my activities as representative of foreign interests in Japan. The results do not correspond to the efforts. I can see this in a concrete fashion as shown by the statistics of my services and requests which have been made by my Government at the request of the Governments who have confided their interests in us. I desire to confine myself for the moment to my requests to visit prisoner of war camps. Reviewing my requests made over more than two years, I find that from 1 February 1942 to 15 March 1944, I have intervened 134 times in writing. These 134 notes have brought exactly 24 replies from

the Foreign Ministry. Most of these replies are either negative or forward to me decisions made by competent authorities. I have received three replies in nine months."

The judgment goes on to state that in the few cases where the representatives of the Protecting Power were allowed to visit detention camps, the camps were prepared for the visit and the visits were strictly supervised, in spite of repeated objections by the Protecting Power.

On the subject of mail the judgment states:

"The mail which prisoners of war were allowed to send was restricted almost to the point of prohibition. Prisoners in some camps, such as those at Singapore, were told by their guards that unless they reported favourably on conditions at the camp their cards would not be sent. This appears to have been the general rule."

Secretary of State Cordell Hull, in speaking of the treatment of prisoners of war in Japanese hands, stated:

"According to the reports of cruelty and inhumanity, it would be necessary to summon the representatives of all the demons available anywhere and combine their fiendishness with all that is bloody in order to describe the conduct of those who inflicted those unthinkable atrocities on the Americans and Filipinos."

In its judgment the Tribunal observed that the vigour of this language was fully justified by the evidence given before the Tribunal.

The British hand-book also indicates that maltreatment of internees in the camps administered by the Japanese was general in its character. The following excerpts make this clear:

"While the Conventions were naturally not perfect and while their observance by the enemy was, as will be seen later, very far from perfect, it is beyond all doubt that, thanks to them and to the unremitting labours of the representatives of the Protecting Powers whose rights are defined in Article 86 of the Prisoners of War Convention, the lot of prisoners of war was, generally speaking, more bearable than in the 1914-18 war. This statement must, however, be strongly qualified as regards the Japanese Government. The latter, while professing their intention to observe the Conventions, in actual fact did exactly what they thought fit, and in all matters what they thought fit differed entirely either from the letter or the spirit of the Conventions." (p. 7).

"In areas under Japanese administration before the existence of a state of war, British subjects did not at first suffer undue hardship, but in territories occupied during and after December 1941 there was no attempt to conform to civilized standards, either in the case of prisoners of war or of civilians. The most that can be said is that, as compared with prisoners of war, civilian internees in some areas were relatively fortunate in that, if they were badly treated, this was due to callous indifference rather than to a policy of studied brutality on the part of the Japanese officials and camp authorities. Like the Gestapo, however, the Japanese gendarmerie were a law unto themselves and their interference in camp affairs was, with good reason, dreaded by all." (p. 126).

"All neutral representatives either had to be withdrawn or were no longer recognized, and we rightly deduced that the Japanese authorities would not allow neutral observers to see conditions in the occupied countries, and in particular in prisoner of war and civilian camps because the conditions were not fit to be seen." (p. 126).

"Although we never ceased our efforts to induce the Japanese to implement their promises and apply the Prisoners of War Convention, it would be futile to record in detail the continuous breaches which occurred, seeing that the Japanese deliberately and consistently ignored the general humanitarian principles on which the Convention is based." (p. 128).

"The observance of Articles 2, 3 and 4 of the Convention was, in general, a mockery. When expedient, though not otherwise, prisoners were tortured to induce them to reveal information. This was part of the system and was not due to casual brutality." (p. 128).

"Article 7, dealing with the evacuation of prisoners of war from the fighting zone, was ignored, the Japanese siting transit and permanent camps where they most needed labour and without any regard to the safety of the prisoners." (p. 128).

"Punishment for minor offences was out of all proportion and was carried out in the most arbitrary and barbarous manner. Attempted escape was almost always punished either by death or by life-sentences." (p. 129).

"The most noticeable characteristic of the Japanese authorities in Hong Kong was their callous indifference to the suffering of both civilian and military prisoners. In addition prisoners were subjected to physical violence, such as face-slapping, beating over the head and the more brutal forms of punishment for infringement of regulations." (p. 140).

"There were eight main camps in the Netherlands East Indies and conditions in all were much the same, any differences being due to the personality of the camp commandant and the Japanese guards. In Borneo the treatment was especially brutal and the prisoners were half-starved. This only became known when the island was re-occupied. Despite great overcrowding, accommodation was the most satisfactory feature of the camps, as the prisoners were generally housed in empty barracks which had some degree of proper sanitation. No bedding was provided, but the prisoners had been able to keep some of their own blankets. Officers were housed separately, but received few special privileges and were liable to be slapped by their guards for petty offences. The ration scales of other ranks were lower than for the Japanese and they were constantly slapped, beaten over the heads with sticks and punished in brutal and degrading ways. Work was compulsory and the most menial tasks were allotted to Europeans in order to humiliate them. Disobedience or attempted escape was punishable by death." (p. 146).

"A particularly shocking instance of calculated Japanese brutality was the moving of some 3/4,000 British prisoners in Borneo in conditions which can truly be described as those of a "death march". Of these unhappy men a bare handful survived." (p. 147).

"The first report on which action was taken was from an escaped prisoner and concerned the conditions in Rangoon Gaol. A protest through the Protecting Power in September 1942, evoked a flat denial from the Japanese of the truth of the report. As the fighting continued the accounts which we received of the brutality, the tortures and the executions carried out by the Japanese soldiery on able-bodied and wounded prisoners of war alike, medical personnel, officers and men of all races, European, Indian and African, were sickening." (p. 148).

"Regulations (in Japanese camps for civilians in the Philippines) were arbitrarily enforced by junior officers, complaints were ignored by senior officers and there were cases of deliberate and barbarous brutality on the part of camp staffs and guards. The general policy was to make internment

as unpleasant and intolerable as possible. The treatment was in every respect consistently bad, and escapers were, if recaptured, put to death." (p. 152).

The tone of the British hand-book, issued as it was five years after the end of the war, carries the conviction of its reliability. The statements quoted from it in addition to receiving support from those quoted from the judgment of the International Military Tribunal for the Far East, receive widespread support from other publications. While it is probably true that there were some inmates of internment camps administered by the Japanese, both civilians and prisoners of war, who did not suffer maltreatment, at least to an extent serious enough to justify a claim for compensation against enemy assets, and while it is also true that there were considerable variations of conditions as between the camps, conditions in Japan, Formosa, Korea and Manchuria being in general much better than those in the southern areas occupied by the Japanese forces (British hand-book, p. 137), it can be said with a fair approach to accuracy that all internees in camps operated by the Japanese were maltreated. For this reason it seems to me that if maltreatment of itself should give rise to a valid claim for compensation out of the War Claims Fund it would be a mistake to require a Commissioner to take evidence in every individual case of alleged maltreatment in the Japanese-administered camps in the Far East. The proceedings would consume an immense amount of time and while some differentiation might be made between the amounts approved for claimants the weight of advantage is, in my opinion, in favour of what may be called automatic awards made up on a *per diem* basis. As, however, there is no satisfactory evidence of general maltreatment outside of the internment camps in the Far East while operated by the Japanese, or either inside or outside of the internment camps administered by Germany or Italy (except certain concentration camps to be mentioned later) this principle in my view should apply in the Far East only to Japanese-operated camps and only for the periods during which they were operated by the Japanese and in Europe should apply only to the concentration camps.

With regard to the camps administered by the German and Italian authorities the following citations from the British hand-book are illuminating:

"Although much unnecessary suffering was caused, both deliberately and by chance, to British civilians who either chose or were compelled to remain in enemy or enemy-occupied territories in Europe during the war, their lot as compared with that of other Allied nationals and of British nationals in the Far East was fortunate. This was partly due to the untiring energy of both the United States and the Swiss Governments as Protecting Power and to the admirable welfare work carried out by the International Red Cross Committee, often in the face of considerable difficulties, but chiefly to the fact that, despite the existence among our enemies of many ruthless and brutally callous individuals, the great majority of the officials with whom British subjects came into contact had reached the same standard of civilization and still retained the same humanitarian outlook as ourselves. This fact not only secured, on the whole, spontaneously reasonable treatment for our people, but also meant that the German and Italian Governments took a keen interest in the fate of their own nationals in British territory as compared with the calculated indifference shown by the Japanese. Therefore, despite a number of shocking examples of brutality such as we should not have expected from civilized nations, the Germans, the Italians and their satellites, generally speaking, knew as well as we did what was meant by the humane treatment of civilians, by properly balanced rations, reasonable living accommodations and adequate medical services. This

did not always mean that they applied their knowledge, but at least we were not considering in Europe such matters on a different plane as we had to do in our dealings with the Japanese." (pp. 79 and 80).

"The treatment of British internees in German internment camps was not on the whole bad." (p. 82).

Moreover, while there may have been random and isolated instances of maltreatment of persons in internment or detention by the German and Italian authorities, the files certainly do not indicate that this condition obtained generally if relatively minor violations of the Geneva Convention are left out of account. It seems to be true that the rations issued in Germany to prisoners of war were not equivalent to the rations of any category of German troops (British hand-book, p. 18) and a finding to this effect (like a similar finding as to Italy) was made by the United States War Claims Commission. (See First Semi-Annual Report to the Congress for the period ending March 13, 1950, p. 47). However, the food supplied is said to have been on the scale of rations drawn by German civilians and I do not think that for purposes of claims for compensation from the War Claims Fund limitation to this scale should be regarded as maltreatment. In the case of camp installations the requirements of Article 10 of the Geneva Convention were never fully met by Germany, but the British hand-book points out that "probably they never could be by any belligerent, seeing that it is a question of housing, usually at relatively short notice, large bodies of men on a scale comparable to the conditions in which the detaining power's own troops are housed." (p. 18). The British hand-book states that "the Italians, broadly speaking, tried to be correct and kind and their failures were as a rule due to inefficiency and procrastination." (p. 18).

For these reasons I think there should be no presumption that persons interned or detained were maltreated except where they were interned in camps in the Far East and then only during the period when such camps were operated—that is administered or effectively controlled—by the Japanese, or where they were interned in certain concentration camps in Europe. Any person claiming for maltreatment elsewhere or not within the period mentioned should be required to prove that he suffered maltreatment.

It is now necessary to deal more fully with the concentration camps in Europe. The definition of internment camps suggested above includes concentration camps. But the words "concentration camp" have a much more sinister significance than the words "internment camp". They ordinarily mean a camp established to contain persons not because they are enemy aliens or prisoners of war but for other reasons relating to race or political offences. In enemy and enemy-occupied territories there were some of these camps. I recommend that a list of concentration camps where continuous and serious brutality and maltreatment of inmates was carried on be compiled (on evidence which I have not been able to obtain completely enough to enable me to compile the list) with the periods during which it was carried on and that the presumption of maltreatment and the *per diem* award system applicable to Japanese-operated camps be applied to the concentration camps on such list and for the periods there appearing. The only concentration camps of which I have any knowledge that should in my view be listed are those controlled and directly administered by Die Schutzstaffeln Der Nationalsozialistischen Deutschen Arbeiterpartei, commonly known as the S.S. Maltreatment in concentration camps administered by the S.S. was fully considered by the International Military Tribunal which sat at Nuremberg, Germany, to try German Major War Criminals. At this trial the S.S. was indicted as a criminal organization under Article 9 of the Charter defining the constitution, jurisdiction and func-

tions of the tribunal and found guilty. In arriving at its findings the tribunal took into account the activities of the S.S. in connection with concentration camps. An excerpt from the judgment on the S.S., dealing with the administration of concentration camps, reads as follows:

"From 1934 onwards the SS was responsible for the guarding and administration of concentration camps. The evidence leaves no doubt that the consistently brutal treatment of the inmates of concentration camps was carried out as a result of the general policy of the SS, which was that the inmates were racial inferiors to be treated only with contempt. There is evidence that where manpower considerations permitted, Himmler wanted to rotate guard battalions so that all members of the SS would be instructed as to the proper attitude to take to inferior races. After 1942 when the concentration camps were placed under the control of the WVHA they were used as a source of slave labour. An agreement made with the Ministry of Justice on 18th September, 1942, provided that anti-social elements who had finished prison sentences were to be delivered to the SS to be worked to death. Steps were continually taken, involving the use of the Security Police and SD and even the Waffen SS, to insure that the SS had an adequate supply of concentration camp labour for its projects. In connection with the administration of the concentration camps, the SS embarked on a series of experiments on human beings which were performed on prisoners of war or concentration camp inmates. These experiments included freezing to death, and killing by poison bullets. The SS was able to obtain an allocation of Government funds for this kind of research on the grounds that they had access to human material not available to other agencies."

There were some instances of Canadians being placed in concentration camps during the war. It is believed that a few Canadian civilians were sent to concentration camps when they should have been sent to ordinary internment camps. Likewise it may be established in a few cases that recaptured prisoners of war (members of the Canadian forces) were punished by being sent to concentration camps instead of being sent back to prisoner of war camps. It seems evident that if compensation for maltreatment of persons in Japanese-operated camps should be awarded on a *per diem* basis for the periods when the camps were so operated the same treatment should be extended to persons interned in the listed concentration camps for the periods to be listed.

In general it may be said that the maltreatment by the Japanese in the Far East and in the concentration camps to be listed was continuous during the period of internment, while on the other hand, any maltreatment there may have been of persons interned or detained in Europe, except in the concentration camps to be listed, was not. It would, therefore, appear to be necessary to establish two bases for the payment of compensation. Common to both bases, however, is the principle that compensation for maltreatment is not to be based on pecuniary loss. A rational basis for compensation for maltreatment is hard to define. It must be recognized that the suffering and hardship imposed by maltreatment may not exceed, and in many cases would not equal, the hardship and suffering of members of the armed forces in action. The risks of disability and death are ordinarily less. On the other hand, the hardship and suffering of the member of the forces on the field of battle, on the sea, or in the air, is contemplated as incidental to the task which he undertakes. Maltreatment was recognized at the end of World War I as giving rise to claims for compensation. It is a ground for claim which Canada could put forward in negotiating a treaty with a defeated enemy as

one for which the defeated enemy should compensate. In my view it is, therefore, an appropriate claim to be admitted as a war claim against enemy assets in the hands of the Canadian Government.

The basis of such claim in the case of Japanese-operated camps in the Far East and in the listed concentration camps where maltreatment should be presumed to have been continuous for the reasons above given, should in my view be a *per diem* basis related to the time interned. The award to any claimant should be deemed to compensate for all maltreatment of whatever kind which the claimant suffered during the period of his internment. I have come to the conclusion that civilian internees, whether men, women or children, should be given a maltreatment award of \$1.00 a day for the time interned. For reasons to be developed later this award should include any element of pecuniary loss, such as payment for food, or failure to obtain compensation for labour, which they suffered as a result of the maltreatment during the period of internment. The case of prisoners of war presents greater difficulties. It may be considered that members of the forces interned in camps should not be compensated on a flat rate *per diem* basis because this in effect would be adding to their service pay and discriminating against other members of the forces who were fighting in conditions which may be described as those of organized maltreatment. However, if the reasons for making maltreatment awards to prisoners of war as given above are valid the fact that the award is on a *per diem* basis should not be taken as indicating that it is in any sense an addition to their pay. It is merely a method of arriving at an award of compensation properly payable for maltreatment. I may add that I do not think that a moderate allowance for compensation for maltreatment effects a real discrimination in favour of prisoners of war as against those not taken prisoner. Among other considerations it may be noted that a member of the forces who was not taken prisoner could rely, by and large, on prompt and proper medical and hospital treatment and upon discharge to pension if unable to continue in the forces. These privileges were denied to prisoners of war in substandard camps. They, too, were entitled to rely on prompt and proper medical treatment and proper nourishment, but they did not get it. In any event Article 16 of the treaty with Japan recognized the propriety of making some special allowances to these prisoners. This article is as follows:

"As an expression of its desire to indemnify those members of the armed forces of the Allied Powers who suffered undue hardships while prisoners of war of Japan, Japan will transfer its assets and those of its nationals in countries which were neutral during the war, or which were at war with any of the Allied Powers, or, at its option, the equivalent of such assets, to the International Committee of the Red Cross which shall liquidate such assets and distribute the resultant fund to appropriate national agencies, for the benefit of former prisoners of war and their families on such basis as it may determine to be equitable. The categories of assets described in Article 14(a) 2(11) (ii) through (v) of the present Treaty shall be excepted from transfer, as well as assets of Japanese natural persons not residents of Japan on the first coming into force of the Treaty. It is equally understood that the transfer provision of this Article has no application to the 19,770 shares in the Bank for International Settlements presently owned by Japanese financial institutions."

It has been impossible to secure definite information as to the value of the Japanese assets in neutral and ex-enemy countries which will be available for former Allied prisoners of war and their families under Article 16 or as to the basis of distribution of these assets but it has been the position of Canada that they should be distributed on a man-day of internment basis. In any event it is reasonable to expect that some provision will be made for Canadian

ex-prisoners of war out of these assets. I therefore recommend that 75¢ a day be the *per diem* rate for maltreatment of those who were members of the armed forces and who were prisoners of war of Japan as compared with \$1.00 a day for others who are eligible for *per diem* awards, but that an additional 25¢ a day be retained in the Fund in a suspense account to be used to such extent as may be necessary for the purpose of bringing the 75¢ a day up to \$1.00 a day as and when the value of the benefit received under Article 16 of the treaty with Japan by any claimant is ascertained. Any balance in the suspense account not required for this purpose should be transferred to the general accounts of the Fund, and if the value of the benefit received under Article 16 in respect of the maltreatment of a member of the forces is not less than a sum equivalent to 25¢ for each day of his internment, the whole sum in the suspense account in respect of that member should be transferred to the general accounts of the Fund. If, before the time comes for making the maltreatment awards, there are any indications that the amount available under Article 16 of the treaty with Japan may exceed 25¢ per man-day of internment, the figure of 75¢ should be reduced and the figure of 25¢ should be increased, but the result of inquiries to date indicates that the amount available will not be more than 25¢ per man-day and may be considerably less.

I do not think the fact that prisoners of war were in receipt of pay and allowances and that their time of internment counted for gratuities and rehabilitation benefits has any real relevancy. Members of the forces were captured in the Far East because they were sent there. Civilians were interned because for reasons of their own they lived in that part of the world. The principle that compensation to civilians for mere internment is not recoverable while at the same time members of the forces should be paid during their period of internment is well-established and settled.

In addition to the *per diem* payment which prisoners of war should receive for maltreatment they are, of course, pensionable for any disability received from maltreatment but should not be entitled to any compensation other than the *per diem* rate in respect of the period during which they were in the camps. As in the case of civilians the *per diem* award should cover the pecuniary loss, if any, such as failure to obtain compensation for labour, which they sustained as a result of the maltreatment during the period of internment.

The period of internment for purposes of computing the *per diem* award should include the period of transit between one Japanese-operated internment camp and another and between one concentration camp and another. It should also include the period after September 2, 1945, if any, during which internment in Japanese-operated camps continued.

I should, perhaps, say a word as to the basis of the selection of \$1.00 a day as the appropriate figure. The number of man-days of prisoners of war internment in the Far East was stated in the House of Commons on May 19, 1950, to have been 2,113,000. About 1,750 Canadian prisoners of war were interned. Nearly half as many civilians were also interned in the Far East but probably for shorter periods on the average. Assuming that \$1.00 a day were paid in respect of all interned prisoners of war the cost to the Fund would be approximately \$2,100,000. And assuming not half but a third of this sum is paid in respect of civilians the cost to the Fund would be another \$700,000 making \$2,800,000 in all. If this sum is discounted by \$600,000 because of deaths in cases where there are no dependents or none eligible for awards and because of benefits to be received under Article 16 of the treaty

with Japan, the *per diem* awards for maltreatment in the Far East will total \$2,200,000 and I would expect the drain on the Fund for *per diem* awards for maltreatment in the Far East to be something of this order.

As the amount of assets of Japanese origin in the hands of the Government is only about \$3,800,000 and as there is a very large number of claimants against the Fund for property losses in the Far East, many of these claimants being in poor or even distressed circumstances, having in some cases lost practically all they possessed as a result of Japanese aggression, it would appear inappropriate to set up a valid claim against the Fund for maltreatment on a *per diem* basis in a sum in excess of the amount mentioned, particularly as the total of the claims for pecuniary loss from death and personal injuries arising from maltreatment may be large and there may be many claims for maltreatment on the lump sum basis to be discussed later as distinguished from the *per diem* basis. True, the assets of Japanese origin and those of German origin will be pooled, but the relationship between total claims for losses in the Far East and the assets obtained from Japan should not be lost sight of. To pay out more than about 60 per cent of the total Japanese assets held by the Government in maltreatment awards would, in my judgment, be hardly defensible, there being so many claims for actual pecuniary losses on the files and so many more certain to be made. But, the application of from 50 to 60 per cent of the assets of Japanese origin to awards for compensation for the grievous maltreatment which took place in Japanese-operated camps, would not seem to be an inappropriate use of moneys in the War Claims Fund.

As indicated above a different basis of compensation should be adopted with regard to awards for maltreatment elsewhere than in the Japanese-operated camps in the Far East and the listed concentration camps. The basis should be different in two respects: first, with regard to the proof of maltreatment to be required by the Commissioner (as indicated above such proof should be required in every case); and secondly, as to the seriousness of the maltreatment which should be considered as essential to an award. If some test of seriousness is not laid down a Commissioner may be confronted with a great variety of claims based on minor infractions of the Geneva Convention; and having no standard to guide him his task in making an equitable distribution of compensation will be impossible to perform. It seems to me that, excepting the automatic awards above mentioned, maltreatment awards should be made only in cases where incapacity to work resulted from the maltreatment and such incapacity subsisted after liberation. This was the test applied by the Sumner Commission as applicable to maltreatment claims by prisoners of war. (See report of the Sumner Commission as quoted by Mr. Errol M. McDougall in his memorandum on Maltreatment of Prisoners of War, dated January 13, 1932, p. 6). The relevant part of the Sumner Commission's decision is as follows:

"III. that in order that damages suffered by a prisoner of war as a result of maltreatment should give rise to a claim for reparation, it would be necessary

(a) that incapacity to work should have been the consequence of maltreatment.

(b) that such incapacity for work should have subsisted after liberation."

This substantially was the test adopted by Mr. McDougall in Canada. The Commissioner should satisfy himself, first, that the maltreatment was of sufficient seriousness to be compensable at all, and secondly, that it met the Sumner Commission test. If satisfied that these two conditions are met the Commissioner should then recommend a lump sum award appropriate to the

maltreatment. Bearing in mind the maximum award possible for maltreatment in Japanese-operated camps in the Far East where the maltreatment in addition to being continuous was in many cases terribly severe, the Commissioner should not in any case recommend a maltreatment award greater than \$1,400.00, this being approximately the maximum that any internee can receive on a *per diem* basis for maltreatment in the Far East. The lump sum awards in many, if not most or all, cases should be less than this sum and in most cases should probably be very much less as maltreatment will probably in most cases be found to have been sporadic or of short duration.

The fact should not be overlooked that the maltreatment awards to civilians both in respect of maltreatment in the Far East and elsewhere will be without prejudice to claims for compensation for pecuniary loss resulting from the maltreatment in respect of the period after liberation from the camps. If civilian claimants are able to establish that as a direct consequence of the maltreatment they have suffered pecuniary loss of any kind in respect of the period after their liberation, either by loss of earnings after liberation down to the time of adjudication or of future earning capacity or otherwise they will be entitled in addition to their maltreatment awards to compensation on the basis set out in the section of the report above dealing with compensation for personal injuries.

One further question remains. Should the maltreatment awards survive for the benefit of estates or dependents in the case of death? As against allowing them to do so is the fact that they are not to be based upon pecuniary loss but are in the nature of *solatium* to the persons maltreated and highly personal in character. But in favour of allowing them to survive are the following considerations: (a) the delay in compensation after liberation; and (b) the fact that there were many cases of expenditures made or incurred or of uncompensated labour in internment which cannot for reasons to be given be compensated out of the Fund. On balance, I think the awards should survive, but as the maltreatment awards will be compensation for something other than pecuniary loss, that they should survive for the benefit of dependents as defined below rather than for the benefit of estates. A reasonable provision would, in my opinion, be that compensation for maltreatment claims shall, in case of death of persons who would be entitled if alive, be payable only to or for the benefit of the following persons:

1. the widow or dependent husband, if there is no child or children of the deceased;
2. the widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children of the deceased in equal shares;
3. the child or children of the deceased in equal shares if there is no widow or dependent husband; and
4. the dependent parent or parents (in equal shares) if there is no widow, dependent husband or child.

It should be borne in mind that in cases where maltreatment caused death there may be valid death claims in addition to maltreatment claims. In any case where these two classes of claims co-exist the accrual of the benefits of the maltreatment award to widow, husband, child, children, parent or parents as the case may be, should be taken into account in determining the pecuniary loss which he, she, or they, have suffered from the death, compensation for the death in such case being upon the balance of gains and losses resulting from the death. This principle is explained above in the section dealing with personal injury claims.

Similarly, where maltreatment caused death but there is no valid death claim because the deceased was a prisoner of war and pension is payable on account of his death, the maltreatment award payable to any dependent should be limited to the amount by which it exceeds the value of the pension of that dependent capitalized as at the date from which pension was payable. Otherwise there would be a discrimination against claimants having civilian claims.

Claims for Property Losses

Many claims have been and will be made for compensation for loss of and damage to property. These claims, like those for compensation for death and personal injuries, should only be allowed to the extent that the loss or damage was directly caused by war operations as defined below. Moreover, no compensation should be paid for damage which is too remote by the standards applied in the civil courts. There should be no assumption, however, that the other principles applied in the courts in the assessment of damages should govern the disposition of war claims, for the reasons given below.

An interpretation of the word "property" as contained in the terms of reference is necessary. "Property" is used in a wide variety of senses. It is used colloquially to denote physical things owned by individuals and certain rights the individual has to receive payments of money, for example, "money in the bank". In the latter case the individual really does not own any money, but is entitled to receive payment from the bank. The widest meaning that may be given to property is that it includes all rights of value vested in an individual whether they are rights to physical things, such as lands or chattels, or rights with respect to debts, shares, bonds, promissory notes, patents, and so forth. At first glance it would appear that the terms of reference may have been intended to denote merely physical things that are property, because I am asked to inquire into the "loss of or damage to" property. The implication from these words is a physical loss or damage. The conclusion I have reached, however, is that property is to be given its widest meaning as including all rights having pecuniary value. It means moveable and immoveable property, whether tangible or intangible, and all rights or interests to or in any kind of property. I attribute this meaning to it because it gives effect to the underlying purpose of the inquiry, namely, to ascertain the losses to individuals arising out of the war for which compensation is to be paid out of the War Claims Fund. Loss may result from the sequestration of rights, such as debts, shares, and so forth, quite as much as from destruction of tangible physical things.

Having reached this conclusion I found it necessary to give a corresponding interpretation to the words "loss of or damage to". There is no difficulty in applying these words where the property is of a tangible nature. In the case of so-called intangible property, debts and other rights of a valuable nature, I interpret these words as implying a divesting of the right. In such case, clearly the right has been lost. In this respect some confusion may arise because, in fact, there is not a clear distinction between tangible and intangible property. From a strictly theoretical legal point of view all property consists of rights. The subject of the right may or may not be a physical object. The type of property usually referred to as tangible is where the object of the right is a physical thing such as a house. In the case of so-called intangible property, the object of the right is not a physical object. It may be merely a prospective payment, for example, the right may be to payment of a debt. Intangible property may, however, have a tangible aspect. A debt may be evidenced by a document which is a tangible object. Similarly, the rights of shareholders in companies, or of bondholders or other kinds of

rights, may be evidenced by certificates. Moreover, such a document may be the sole evidence of the title to the right, for example, a bearer bond. The bond evidences a right to payment from the debtor company. It derives its value from the promise to pay, and it is therefore the promise to pay that is of value. If, however, the bearer certificate is lost, then the owner is divested of his right. Loss of or destruction of a certificate may, therefore, result in the owner of a right being divested of his right.

If "property" and "loss of or damage to" it are to be given the wide interpretations I have concluded they must bear, it becomes apparent that the wartime activities which may cause "loss of or damage to property" may be of two kinds. They may be of a kind that cause physical destruction of things owned, such as houses, ships, and so forth, or they may be of a kind that merely deprives the individual of a right of pecuniary value, for example, divest him of his right to claim payment of money deposited with the bank or to collect a debt owing to him. I have had to consider the nature of wartime activities operating in both of these ways which may cause losses which give rise to war claims.

I have concluded that claims for losses with respect to "property" should be admitted as war claims where the loss was caused by the following:

1. physical loss of or damage to tangible things caused by acts of actual warfare by belligerent armed forces whether army, navy or air forces, and whether those of an enemy or an ally of an enemy or Canadian or Allied forces;

2. physical loss or disappearance of tangible things caused by theft or looting in a theatre of actual warfare in a country of an enemy or an ally of an enemy or in an area occupied by an enemy or an ally of an enemy, whether the looting or theft was by members of armed forces or not, looting to be conclusively presumed where the cause of the loss or disappearance cannot be established;

3. physical loss or disappearance of or damage to tangible things caused by seizure, sequestration, confiscation or requisition by the government of the country of an enemy or an ally of an enemy on the ground of the enemy character of the Canadian owner (hereinafter referred to as wartime special measures) or by the armed forces of any belligerent in a theatre of actual warfare in a country of an enemy or an ally of an enemy or in an area occupied by an enemy or an ally of an enemy and by the failure of those taking the things to return them to the Canadian owner after the war or to take due care of them before their return; or

4. the divesting of rights having pecuniary value by wartime special measures of an enemy government on the ground of the enemy character of the Canadian owner where such rights have not been revested in the Canadian owner after the war.

I include in tangible things currency and certificates or other evidence of rights where the possession of the certificates is the basis of the right, for example, a bearer bond.

The causes set out above (i.e. in the parts of paragraphs 1, 2 and 3 after the words "caused by" in each case and in the whole of paragraph 4) will occasionally be referred to below as war operations. The claims for losses of money or rights to payment of money will be referred to as money claims and the claims for other losses of property, including claims for damage to property, as physical assets claims.

The admission of claims for the losses set out in 1, 2, 3 and 4 above in my opinion gives proper effect to the considerations I mentioned earlier. I have already indicated the reasons why I consider that acts of actual warfare causing deaths or personal injuries should give rise to war claims. The same

considerations apply to losses of or damage to property. I include losses resulting from "looting" because while looting is not an act of actual warfare by belligerent forces, and much looting was done by civilians, looting springs so obviously from the conditions created by actual warfare that it must be considered as a natural and ordinary accompaniment of it.

I recommend that the losses mentioned in clauses 3 and 4 be admissible for compensation because they arise from acts which are really acts of war, are of the type of losses which fall only on specific individuals and not on the community at large, and meet the other requirements for admissible claims.

One class of exceptions to the losses enumerated above as compensable should, however, be established. These losses as enumerated would include certain losses of personal belongings by members of the Canadian armed forces lost, stolen or looted. I am informed that the understanding has always been that members of the armed forces, if they took with them personal belongings on service, did so entirely at their own risk and in my opinion losses of such belongings should not be compensable out of the War Claims Fund.

Many claims have been made for compensation for loss of or damage to property from causes other than those I have enumerated. If an attempt is made to go beyond war operations as the cause of loss it will be impossible to fix a dividing line between special losses and those common to the whole community or large sections of it. It is essential that the loss must have arisen from war operations and not merely from the existence of a state of war. This distinction was emphasized after World War I by the Sumner Commission (report of January 22, 1923, p. 12) in the following words:

"Again the Commission have felt bound to apply the legal rules as to remoteness of damage and particularly to disallow losses which arise only from the existence of a state of war, where the liability to loss is common to all Your Majesty's subjects though in the particular case it may have fallen more heavily on the claimant than on others."

The Canadian Commissioners frequently declined to allow losses arising only from the existence of a state of war. The following quotation from the decision of Commissioner Friel in Case 1457, *re Canada Steamship Lines, Limited*, Reparations, Vol. II, pp. 581 and 582, which has value also as bearing on the question whether war risk insurance premiums should be allowed, is only one of many references to the distinction between the existence of a state of war and war operations:

"The claims for war risk premiums paid either on the vessels lost or other vessels will not be allowed. They are not a matter of direct damage by Germany. The claimant company put on the insurance of its own volition and in the exercise of its own discretion on account of the existence of a state of war, but the expenses are in no sense losses, damages or injuries caused by the enemy's act within the meaning of the Treaty. The expenses were not incurred to repair loss by the enemy's act, but to provide against what the claimant feared the enemy might do resulting in a loss to it. The expenses were losses to the claimant on account of the war but are not losses for which Germany could be obliged to pay; moreover, such losses were no doubt more than compensated for by increased freight rates. There is no more reason for compensation to the claimants for the war risk insurance premiums paid than there is that the advance in ocean freight rates during the war should be recovered by the persons who had to pay them.

If the terms of the Treaty could be interpreted to cover such claims, then they could be taken to include all increased living costs, increased railway freights, increased income and profit taxes; in a word, all costs or consequences of the war direct or remote, to the extent that such costs were paid or losses suffered by Canadian subjects.

I would disallow the claim for war risk insurance paid."

The problems raised by the property claims can hardly be understood unless some indication is given of the extent and variety of these claims. After the elimination of claims which appear from the files to have been made by persons who were not Canadians at the time of loss, the classes of property losses outside of Canada for which claims have been made as disclosed by the files, is indicated country by country by the following compilation. (It should be borne in mind that many claims may yet be presented and that the list which follows may be lacking in precision due to the fact that the true nature of the loss is not obvious from the files in every case and a high degree of condensation has been necessary).

Austria—Factories and machinery, hotel and stores, houses, furniture, silverware, linens, rugs, paintings, china, office furniture and fittings, automobile and boat, art collection.

Belgium—Real property, household furniture, personal effects, automobiles, accessories, machinery and equipment, miscellaneous goods, expenses of flight to Canada, salary, profits and dividends, loss of income during internment, duty on automobile, balance on bank drafts, loss of use of personal effects, storage and insurance charges, costs of transfer from storage, rents collected by the enemy, debt from firm liquidated by the enemy.

British North Borneo—Household furniture and personal effects, commercial debt where debtor is bankrupt.

Brunei—Household furnishings and personal effects.

Bulgaria—House, automobile.

Burma—Buildings and machinery, stock-in-trade, furniture and fixtures, automobile, personal effects.

Channel Islands—Furniture, rents, unauthorized repairs, income tax, legal fees.

China—House damaged by dilapidation, hospital, churches, university buildings, schools, mission property, household furniture, personal effects, automobile tires, rent, customs duties and freight, plant, machinery, equipment, merchandise, automobiles, pensions, superannuation fund, loss of employment, salaries, dividends, medical supplies and business goodwill, payments for food in internment.

Czechoslovakia—Factories and machinery, cotton mills, woollen mills, including claims for total loss, for damage and for depreciation, power station, railroad station, airport, bridges, road and factory court, farm buildings, barns, fruit trees cut down, houses, apartment buildings, office buildings, garage building, including claims for total loss and damage, merchandise, machinery, office equipment, household furniture, silverware, glassware, china, carpets, books, paintings, fruit, wagon, straw, spindles, automobiles, bales of kidskin, rentals of mill, accounts receivable, directors' fees, dividends, bank shares and other shares, bank accounts, state loans, insurance policies, securities, losses on forced sale.

Danzig—Apartment buildings.

Estonia—Farm, coal importing and shipping business.

France—Château, houses, villa, including claims for total destruction, damage and dilapidation, factory damaged, damage to convent, garden and park and drainage system, household furniture and personal effects, including clothing, jewellery, silverware, wines, spirits, frigidaire, library, books, sculptures and pictures, including claims for loss, damage and deterioration for want of care, antique chest with contents, automobiles, office furniture and fixtures, photographs, sketches, deterioration of dental installations, medical instruments, cows, miscellaneous merchandise, rents, losses on devaluation of franc, expenses of removal and storage, loss of money on prepaid lease and amortization of lease, architect's fees for assessment of damage, goodwill of business, loss of income during internment, loss of profits from business, expenses of flight from France, freight on furniture shipped from France.

Germany—Apartment house, houses destroyed or damaged, factories and machinery, household furniture and personal effects, antique art, rifles, telescopes, scientific instruments, jewellery, automobiles, musical instruments, aluminum metals, office furniture and fittings, loss of machines transferred under duress, miscellaneous goods, cash, bank accounts, loss of rental revenue, loss of profits, loss of income during internment, loan to brother for operations of plant, cost of establishing claims, mortgages on houses, travellers' cheques, clearing work, dismantling work and transfer of debris, financial losses caused by operations under a lease and sales agreement imposed by the German Government in 1942, financial losses suffered under a retransfer agreement of 1948, loss due to forced post-war restitution of machines purchased from manufacturers in countries occupied by Germany.

Greece—Aluminum plant, hotel and furnishings, villa, houses and barns, including equipment such as electric plants, with claims for loss for wear and tear owing to enemy occupation, retail shops, household furniture and personal effects, automobiles, jewellery, wheat, olive oil, olives, raisins and other merchandise, ore stocks, cash, bonds, income from concession, rents, cost of passage.

Hong Kong—Houses destroyed or damaged, factory looted, household furniture and personal effects, automobiles, office equipment, steam launch, brake lining and clutch facings, coconut oil, canned tuna fish, coffee, coal, cloth, wines and spirits, tea, hospital instruments, clothing, bonds and share certificates, proportion of rent and servants' wages (apartment requisitioned by Government), cash, rent and taxes for office sub-let to Government, salaries, special expenses for unloading goods, gold coins and notes in safety deposit boxes, bank interest charges, cost of repairs due to looting, expenses of trip to Canada, funds borrowed from Canadian Government, bank accounts liquidated by Japanese, account receivable from firm which cannot be traced, loss of deposit due to inflation.

Hungary—Loss of or damage to houses, farms, barns, agricultural implements, wine-presses and wine, vineyard, office buildings, personal belongings and household effects, hardwood veneers and lumber, jewellery, rugs, oxen, wagon, automobiles, horses, riding equipment, oats and hay.

Indo-China—Damage to mining exploration business and shoe factory and machinery and loss of household effects, merchandise, machine tools and spare parts, unspecified expenses.

Indonesia—Household furniture and personal effects, automobile, jewellery, brake linings, gin, trade debt where firm cannot be traced, interest and dividends on shares, fees for registration of passports.

Italy—Damage to residential houses, villas, and other dwellings, farm buildings, surrounding walls and gardens, vineyards, olive groves, poultry yard, hayloft, agricultural lands, fruit trees and fruit, irrigation ditches, crops and soil, dilapidation to religious college buildings and interior, and damage to office buildings, loss of or damage to industrial buildings, shops, roads, railway, tracks and land, iron ware, cable way, motors and equipment, workshop equipment, machinery, loss of or damage to household effects and furniture including clothing, fur coats, linen, jewellery, silverware, cutlery, chinaware and porcelain, library books, pictures (oils, watercolours, and etchings), cut glass ware, antiques, works of art, sculptures, religious objects, ornamental objects, bronzes, oriental rugs, carpets, curtains, lift vans, trunks and cases of personal effects, trousseau, farm equipment and implements, wine-presses and wine, cattle, hydraulic motor plant on farm, automobiles, auto parts, tires and tubes, miscellaneous merchandise, yacht, metals, fuels, lubricants and explosives, shoe making machinery, shoes, leather, pressed cork, postal savings certificates seized by Italian Custodian, subrogation claims in respect of confiscation by the Italian Government of sundry cargoes, cash both lire and Canadian currency, payments for food in internment, rent held by sequestrator, charges for storage and handling of furniture, financial losses due to non-payment of price integration quota for bauxite sold during the war, financial losses during sequestration, expenses and charges of sequestration management, expenses of establishing claim, cost of recovery of stolen materials, dismantling and reinstallation charges.

Japan—Factories, houses and garage, monastery (dilapidation), church property (destruction and depreciation of buildings), office buildings, perpetual lease of property which was destroyed, household furniture and personal effects, including claims for loss on forced sale by Japanese, office furniture, wine, coal, mustard seed, tuna fish, automobiles and boat, loss of dividends on shares, shares sold by Japanese Custodian, trade debt against firm which cannot be located, cash deposit, bank balance, box of Chinese coins, Canadian funds confiscated by Japanese.

Malaya—Damage to shoe and other factories and to rubber estate, business liquidated by the Japanese, household furnishings and personal effects, automobiles, brake linings, canned pineapple, labels, natural rubber, office furniture and equipment, travelling expenses to United Kingdom, cash, interest and dividends on shares.

Monaco—Villa, household furniture.

Netherlands—Shoe factory, machinery, office furniture, merchandise, raw materials, rubber, chemicals, personal belongings and household effects, silverware, accounts and other moneys collected by the German Custodian.

Norway—Miscellaneous goods, prepaid rent.

Philippine Is.—Business of telephone company liquidated by Japanese (claim by shareholders), household furniture and personal effects, office furniture and fittings, automobile, flour, drugs, payments for food in internment.

Poland—Apartment block, office furniture and fittings, miscellaneous goods, bank accounts, bonds, coins in safety deposit box, prepaid rent.

Roumania—Loss of or damage to oil drilling machinery and equipment, oil, oil royalties, stock-in-trade, securities, cash and gold coins, houses, rentals, agricultural equipment, personal belongings and household effects.

Thailand—Personal effects, bank account (loss due to currency depreciation).

Yugoslavia—House, household furniture and personal effects, merchandise, manuscripts.

High Seas—Subrogation claims by insurance companies for payments made in respect of lost ships and cargoes, lost cargoes, lost personal belongings or household effects, vessels purchased in replacement of vessels lost, loss of net earnings or profits on lost vessels, lost vessels, financial losses due to diversion of Allied ships due to outbreak of war or to issuance of Government's orders, such as loss on resale of cargoes, or cable, cartage, loading, unloading, landing or storage charges, or depreciation in value of cargoes, loss of goods already paid for owing to goods having been on an enemy ship at time of outbreak of war, war risk insurance premiums, repatriation of crew surviving from sunken vessel, hospital fees and clothing for destitute passengers, calls, cables and air mail postage in connection with sinking of vessel.

A number of categories of claims for alleged property losses may now be separately considered. It is impossible to envisage all types of property claims which may arise but the files examined indicate or suggest that the following kinds of claims may be made.

1. *Claims for loss of use of property after damage, destruction, or sequestration, or for the time when the owner was interned.*

For reasons which will be given below under the heading of "Valuation of Claims for Property Losses", it will be submitted that compensation should be based upon the principle that the real loss to a Canadian owner of property which was damaged, destroyed, or sequestered in foreign countries arose after the war, and that in cases where property was restored to the owner after the war undamaged by war operations there was no compensable loss. The claims for loss of use of property should, therefore, not be allowed. I cannot find that the Canadian Commissioners after World War I ever allowed compensation for loss of use. The United States-German Mixed Claims Commission declined to do so. Umpire Parker of that Commission in his decision in the case of *American-Hawaiian Steamship Company* (see Whiteman, Vol. II, p. 1245) said:

"Suffice it here to point out that (save in cases arising in German territory) the provisions of the Treaty of Berlin defining Germany's obligations to compensate for property injured or destroyed limit such obligations to physical or material damage to tangible things and do not extend them to damages in the nature of the loss of profit, the loss of use, or the loss of enjoyment of the physical property injured or destroyed."

While the decisions of the Canadian Commissioners and of the Mixed Claims Commission were based on an interpretation of treaty provisions (Treaty of Versailles or Treaty of Berlin) I think they should be applied to claims for loss of use, profits or enjoyment now being made. This view is supported by the terms of reference which direct me to make recommendations as to claims in respect of loss of or damage to *property*. The allowance of interest which will be recommended will, in some measure, offset the disadvantage which claimants suffered from being deprived of use, profits and enjoyment and will be limited to the periods during which it may be assumed that the claimant would, had his property not been lost, damaged or withheld, have received benefit from it.

2. *Claims for loss of profits of businesses carried on with or in property damaged, destroyed or sequestered.*

These should be disallowed for the reasons given in 1 and also because the amount of profits which would have been made had there been no loss of the property is speculative and uncertain. There are many precedents both after World War I and under international arbitrations for rejecting claims for losses

of profits. For Canadian precedents see Case 1249, pp. 419 and 420, *re Mickleborough, Muldrew & Company*; Case 1450, pp. 572 and 573, *re International Petroleum Company, Limited*; and Case 1459, pp. 588 and 589, *re National Fish Company Limited*, in *Reparations*, Vol. II.

3. *Claims for loss of rentals of property damaged, destroyed or sequestered.*

These should be rejected for the reasons given in 1 and 2. Rentals, however, collected by enemy authorities and not returned to the Canadian owner, should be regarded as furnishing a proper basis for a valid money claim.

4. *Claims for interest and dividends on investments alleged to have been discontinued by reason of destruction or sequestration of or damage to property.*

These should be disallowed for the reasons given in 1, 2 and 3. If, however, interest and dividends have been collected by enemy authorities and not returned to the Canadian who otherwise would have received them, they would form a proper basis for a good money claim.

5. *Claims for loss of salary or other income of any kind of which the claimant was deprived by reason of his internment or following upon the destruction or sequestration of or damage to property.*

The reasons for rejection set out in 1, 2, 3 and 4 apply to most of these claims. Claims for loss of income during internment cannot be allowed as internment is legitimate and is not the basis of an admissible claim. Such claims were consistently refused after the last war. (Case 1406, pp. 544 and 545, *re John Morrison*; Case 1419, pp. 551 and 552, *re Hyman Fishman*; and Case 1421, pp. 552-554, *re Hon. Henri S. Beland, M.D.*, in *Reparations*, Vol. II). Moreover, the loss is uncertain and speculative. If income after internment or after loss, damage or seizure of property accrues to the Canadian internee or owner and is collected by the enemy authorities and not returned to the Canadian, he, of course, has a good money claim. If, however, it accrues and he is not divested of it on the ground of his enemy character as a Canadian he has no claim simply because he has not received it. He must look to his debtor for payment and if his debtor had died, disappeared or became bankrupt the claimant's loss must be regarded as at best due to the existence of a state of war rather than to an act of war.

6. *Claims for losses in the value of money or money claims due to inflation.*

These should not be allowed. They are not war claims for the reasons given above. The losses are losses common to whole populations, losses which Canadians sustained as residents or investors in the enemy or enemy-occupied country along with all other residents or investors. They arise from the existence of a state of war rather than acts of war. If divested money claims were revested in their owner within a reasonable period after the war after a shrinkage in value due to inflation or depreciation their owners, therefore, have no valid claim to compensation. It follows that if there was no revesting because bank balances were liquidated or currency looted, or for some other reason, the claimant cannot claim the undepreciated value of his money or money claim.

7. *Claims for losses from the depreciation, deterioration or dilapidation of physical assets not destroyed or not wholly destroyed arising from the lack of due care on the part of enemy authorities while the physical assets were in their possession.*

If enemy authorities by wartime special measures took possession of such physical assets and returned them in a damaged condition, the damage being due to such lack of due care, the damage is war damage and should be compensated. If, however, the enemy authorities did not take possession of the assets but merely left them alone there is not a good claim for depreciation,

dilapidation or deterioration resulting from the owner's flight or internment, these not being war operations as defined above. If physical assets were taken by enemy forces or by enemy authorities on the ground of the enemy character of the Canadian owner, and damaged by lack of due care, including clearly excessive wear and tear, there is a good claim. In such case the loss or damage would be caused by war operations.

8. *Claims for loss of rights under patents, trade marks and copyrights.*

It cannot be assumed that a Canadian owner of such rights would have obtained any financial benefits from them during the war or for a reasonable time thereafter. If, however, after the war the owner has found that they have been validly transferred so that he cannot get them back, the value of them as of that date (which, as will be seen later, I would recommend be fixed as January 1, 1946) should be assessed and his claim allowed as upon a valid money claim.

9. *Claims for losses of leasehold interests or similar interests such as those of hirers of chattels.*

It cannot be assumed that such an interest would have been financially beneficial to the Canadian owner during the war. If, however, on January 1, 1946, the claimant is unable to resume enjoyment of his interest because it has been transferred or because of the war damage to or destruction of the subject matter, the value of the interest he would have had for the remaining period of the lease or similar arrangement should be assessed and his claim should be allowed for such value as a valid physical assets claim. If the claimant had prepaid the rent his claim would, of course, be greater than it otherwise would be. As will be seen later, I will recommend that physical assets be valued at pre-war values. There will be difficulties in applying pre-war valuations to leasehold interests which on January 1, 1946, would have a certain number of years to run, especially in cases where there has been damage to or destruction of the subject matter of the lease, where the valuation must be made as if it had not been damaged or destroyed, but these difficulties are not insuperable.

10. *Claims for loss of goodwill of a business carried on in premises damaged, destroyed or sequestered.*

These should be disallowed as they are speculative and uncertain and the loss was not improbably caused by the existence of a state of war rather than by an act of war.

11. *Claims for loss of chattels, the property in which had passed to a purchaser before the loss of the chattel as a result of war operations.*

In some cases the purchaser has refused to pay for the chattels, not having received them, and the seller has presented a claim. Such claims must be disallowed, the remedy of the seller being against the purchaser.

12. *Claims for losses of mortgagees or mortgagors of physical assets which have been lost or damaged by war operations.*

The question which arises is whether claims should not be limited to those who were beneficial owners at the time of loss and whether secured creditors and similar persons should not be excluded because their liens or property interests are merely ancillary to the primary obligation of the debtor to repay the debt and because the amount of the loss is too speculative to found a claim for compensation. It would be much simpler to adopt such a rule, but I think it would be unfair to do so. If a Canadian had a mortgage on a property destroyed by war operations and the evidence shows that the

direct result of the war operations is that he has not only lost the benefit of his security but will certainly lose the amount of his investment as well, it seems to me that he should have a good claim. A Commissioner, to decide on the validity of the claim, would have to know many facts as, for example, whether the mortgagor was at the time of the loss also a Canadian and has a good claim on his own behalf, whether the mortgagor is liable on his personal covenant to the mortgagee, and whether he is likely to repay him. Similar problems arise where a mortgagor is a claimant. There seems little reason to compensate a Canadian mortgagor out of the War Claims Fund for the full value of the property lost if his equity in it was of little value and there is little likelihood of his ever paying the mortgagee, who in some cases may even no longer have a right of recovery. It would be unwise to lay down detailed rules for dealing with claims by mortgagees and mortgagors before some evidence is heard. There are several claims on the files by mortgagees and my recommendation is that their status as such be not regarded as sufficient to bar their claims. Nor, of course, should the status of mortgagors be regarded as sufficient to bar their claims no matter how little their apparent equity in the property was at time of loss. As an instance of a method by which claims of mortgagees may be dealt with, see Allied Powers Property Compensation Law, Article 7, paragraph 2.

13. *Claims for losses by insurance companies who have paid policy holders amounts due to them under war risk insurance policies in settlement of claims for the loss of ships, cargoes or other property destroyed by war operations.*

These claims are based upon the alleged right of the insurance companies to be subrogated to the war claims of the assured. These subrogation claims must be disallowed for the reasons given by Mr. Commissioner Friel in his decision in Case 1501, *re the Western Assurance Company*, Reparations, Vol. II, pp. 625 and 626. Mr. Friel said:

"In the case of the loss of a ship we recommend as compensation to the owner the difference between the value of the vessel and the amount of insurance received. There is no provision for the insurers. Their damage is indirect and consequential. The ship was not their property. For a premium which they increased and regulated according to the risk, they sold the owner insurance. That was their business. They had losses and they had profits. There is nothing in our Commission or in the Orders in Council upon which it is based, or in the spirit or intent of the proposal to make compensation under the categories that would call for subrogation in cases of this kind.

We may well follow the ruling laid down for the Reparation Commission in the Treaty—not to be bound by any particular code or rules of law, but to be guided by justice, equity and good faith.

There is no reason why the insurance business should receive special consideration. I would disallow the claim as it does not come within any of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles."

14. *Claims by creditors for losses alleged to be due to the loss of debtors' properties or the death, disappearance or bankruptcy of debtors as a result of the war.*

These claims should be disallowed. The war doubtless interrupted the discharge of many, and may have prevented the discharge of some, pre-war obligations. But the link of causation, where it can be proved, is between the existence of a state of war and the loss rather than between an act of war and

the loss. Even where the cause can be shown to be an act of war and the loss of the amount owing is claimed as damages flowing from that act such damages would ordinarily be too remote. The debt might not have been paid for other reasons. In Case 796, *re Hugh H. Nelson*, Reparations, Vol. II, pp. 172 and 173, the decision of Commissioner Friel was that a creditor's claim for the amount of a debt due from a passenger who lost his life on the *S.S. Lusitania* was not admissible, the claimant's damages being indirect and consequential. Unless the debt has been divested by enemy authorities by a wartime special measure the creditor must look to his debtor alone.

15. *Claims for loss of share certificates.*

Ordinarily these are not the sole evidence of the ownership of an interest in property or enterprise and claims for such losses should be disallowed.

16. *Claims for loss of insurance policies.*

It is not quite clear from the files what transactions resulted in these losses. If the policies were allowed to lapse because of the disappearance of the policies claims for losses sustained as a result of the lapsing should be disallowed as such losses are indirectly caused and the damages alleged are too remote. If possession of the policy is a condition of entitlement the claim may be a good one, as in the case of a bearer bond. If a Canadian assured, on the ground of his enemy character, is compelled to take the cash surrender value of his policy and the cash is appropriated by the enemy authorities he, of course, has a good money claim. It is unnecessary as well as impossible to be more definite about the treatment of claims based on the loss of insurance policies but there should be little difficulty in applying the general principles set out elsewhere in this report to such claims.

17. *War risk insurance premiums.*

These should be disallowed. They are not claims for loss of or damage to property. In many cases they do not represent a true loss. The assured purchased protection which he received. When the expense was incurred in commercial operations it was ordinarily treated as a business expense and recouped in the course of business. (See Case 1457, *re Canada Steamship Lines, Limited*, Reparations, Vol. II, pp. 577-587 and *supra*).

18. *Claims for losses which could have been insured against.*

The Sumner Commission stated in its final report of February 26, 1924, p. 9, with reference to its position respecting the consequences of the claimant not carrying insurance, the following:

"The Commission have continued to apply the principle, that in the case of persons whose position justified the expectation that, in the ordinary course of things, they would appreciate and resort to insurance, it would be inequitable to allow them to rank, when insurance was available for their protection against the losses actually incurred. In the case of the Government Air Raid Insurance, this involved the consideration of the dates at which experience first showed certain zones to be within striking distance of enemy aircraft, and zones were accordingly carefully fixed in view of the date and the localities of the raids. Persons who could not reasonably be expected to insure were in all cases relieved from the application of this principle."

This principle was not applied by Commissioner Friel who stated in his report of December 14, 1927, Reparations, Vol. I, pp. 18 and 19, the following:

"Where claimants had already received compensation by way of insurance or under the Workmen's Compensation Act or any scheme of War Risk Compensation or from any public fund, the amounts received

have been taken into consideration. The British Commission held that no moral claim upon the fund which they were distributing could be recognized in favour of persons who had at their disposal means of protecting themselves against loss, to which they should have resorted, or who elected to run a risk themselves rather than make use of such protection. They applied the principle that in the case of persons whose position justified the expectation that they would appreciate and resort to insurance, it would be inequitable to allow them to rank, when insurance was available for their protection against the losses actually incurred. The British fund in this and in other respects is distinguishable. Counsel was asked in one of the shipping claims before this Commission why his clients had not availed themselves of war risk insurance. He answered that they chose to carry their own insurance. The not unreasonable reaction to this policy would be to let them bear their loss. I have, however, assessed property at the merchantable value where there is no insurance, and that value less insurance moneys collected where there was insurance."

It will be noted that Commissioner Friel gave no reason for not following the principle applied by the Sumner Commission. In my opinion, that principle should be applied and the claimants, who for the most part are owners of ships and cargoes, who could have taken out war risk insurance, should not be entitled to claim where their position justified the expectation that in the ordinary course of things they would appreciate and resort to insurance and they did not do so. The claim should be reduced for this reason only by the amount of the insurance which they might reasonably have been expected to be able to obtain plus the estimated amount of the premium which the insurance would have cost. If such claimants were allowed the full value of the property lost, although they neglected to insure, other claimants who had paid out insurance premiums would be discriminated against. The negligent owner would, in effect, be getting free insurance. This would be a real and substantial benefit to him as in most cases I would expect that his charges to customers, purchasers and users of his services would be the same as if he had been carrying insurance.

19. *Claims for losses where claimant has been indemnified in whole or in part by payments under war risk insurance policies.*

No more than the value of the property lost less the insurance moneys should be allowed the claimant in any event, and there may be cases where the application of the principle in 18 would make it inappropriate to allow the full difference between the value of the property lost and the insurance moneys collected.

20. *Claims for losses not resulting from war operations, but from some cause which the owner could have insured against had he not fled or been interned or detained.*

These claims should be disallowed as not resulting from war operations and because the damages are too remote, there being no way of determining whether the owner would have insured in any event.

21. *Claims for expenses incurred by ship owners upon the sinking of a ship in returning the members of the crew and passengers to port.*

These claims would, ordinarily at least, be good, being financial losses directly resulting from war operations.

22. *Claims for losses from forced sales.*

The files do not clearly indicate the nature of the transactions referred to as forced sales. But if enemy authorities compelled a Canadian on the ground of his enemy character to sell physical assets and appropriated the

proceeds the Canadian would have a good physical assets claim. It seems to me also that if the enemy authorities forced a Canadian on the ground of his enemy character to sell his property to an enemy national for an inadequate consideration the transaction morally is in the same position as if by a wartime special measure the Canadian had been deprived of part of the value of his property and he would have a good war claim.

23. *Claims for loss of property such as family photographs which cannot be replaced and which have only a sentimental and no pecuniary value.*

As the loss or damage must in all cases be measurable in pecuniary terms, such claims should be disallowed. Where, however, the loss is susceptible of pecuniary measurement, as is conceivable in the case of the loss of some manuscripts, there is a good claim.

24. *Claims for losses as a result of the laws, regulations, executive orders or controls of Canadian or Allied Governments or authorities.*

These ordinarily were suffered by fairly large classes of populations, were not special to the claimants and should not be allowed. Moreover, the causes of these losses cannot be regarded as war operations although they were measures necessitated by the existence of a state of war. It may be necessary in some cases to draw a fine line between acts of the military authorities which were and were not acts of actual warfare. But certainly no acts of the Canadian or Allied civil authorities should form the ground of a war claim. Otherwise wartime regulations and orders of many kinds and affecting in some cases the whole population of Canada would be drawn into the category of war operations. Moreover, where compensation has been limited by law or regulations having legal effect as under the Compensation (Defence) Act, 1940, there should be no further claim for compensation against the War Claims Fund as the amount which Parliament or agencies authorized by Parliament have fixed as adequate has been paid.

25. *Claims for losses of or damage to property outside of Canada resulting from orders given in a theatre of actual warfare by the Canadian or Allied military, naval or air force authorities for the purpose of denying or diminishing the use of such property to the enemy.*

These claims should be allowed as coming within the class of physical loss of or damage to tangible things caused by actual warfare by belligerent armed forces.

26. *Claims for the expenses of going into hiding to avoid internment, of shipping moveables out of the country to prevent them from possible seizure, loss or damage, of transporting, storing and insuring moveables left in the country upon flight either after invasion by the enemy or in anticipation of invasion, of fleeing from an enemy country or from another country in anticipation of invasion, or of returning to Canada before, during or after the war or after liberation from internment.*

These claims present peculiar difficulties but I think should be disallowed. The position of Canadians in foreign countries which either became enemy or enemy-occupied upon or after the outbreak of war is normally that legitimately they may be interned and their property sequestered. At the end of the war they should be released and their property returned to them or paid for by the enemy. If their property is not seized and is lost or damaged by war operations the loss or damage should be made good by the enemy. Any steps they take to avoid internment or seizure or destruction of their property should be regarded as taken on their own financial responsibility. As in the normal case they would be returning to Canada eventually

the costs of their return should be borne by themselves. Some Canadians were repatriated after the war or after release from internment, the Government advancing the expenses of return by way of loans. Other Canadians abroad may not have applied for repatriation because of the obligation to repay, and if such expenses are now defrayed out of the War Claims Fund the latter would be discriminated against.

27. *Claims for the cost of food purchased abroad during the war.*

These claims also present difficulties. The Canadian Government through a Protecting Power disbursed a large amount in relatively small sums as relief to Canadians abroad during the war, some of whom were in internment, some not. These sums were advanced subject to repayment and the greater part of the amount advanced has been repaid. In some cases Canadians abroad paid for food out of their own funds. The extent of the obligations of enemy powers to supply food cannot be defined with any certainty. In at least one case after World War I the Commissioner declined to recommend reimbursement of an interned Canadian for money spent for food, on the ground that had he not been interned such expenditure on his own account would have been necessary. (See Case 1380, *re George N. Purdy (now deceased)*, Reparations, Vol. II, pp. 513-516). To the extent that deprivation of food is regarded as maltreatment for the purpose of recommending maltreatment awards as above, expenditures for food may be regarded as defrayed, in part at least, by these awards. Some Canadians may not have applied for relief because of the obligation to repay and if such expenditures were now defrayed out of the War Claims Fund these Canadians would be discriminated against. On the whole I think the claims should be disallowed.

28. *Claims for amounts which were entered on books of camps as payable for labour performed at instance of interning or detaining authorities but not paid.*

These may be referred to as claims for uncompensated labour. There are no such claims on the files but as some labour of prisoners of war, and perhaps others, was not compensated, the subject should be dealt with. If such claims were dealt with as money claims it would probably be impossible to give a value in Canadian currency to the currency in terms of which the obligation to pay was assumed. Military pay and allowances were paid by the Canadian Government for the whole period of internment. I should think the difficulty of proof would in most cases be insuperable. If discrimination were to be avoided the allowance of such claims would entail the recognition of claims for pay for work of every kind in and about internment camps and the task of fair adjudication would become impossible to perform. To the extent that forcing labour without compensation is regarded as maltreatment for the purpose of recommending maltreatment awards, the unpaid compensation may be regarded as covered in part at least by these awards. For these reasons, I feel compelled to recommend disallowance of such claims.

29. *Claims for the return of money extorted by captors.*

The files indicate that in one case the Japanese compelled a Canadian detained by them to pay them \$250 U.S. per month for a number of months. This transaction does not appear to have differed morally from theft and should be regarded as founding a good claim.

30. *Claims for expenses of establishing claims.*

I can find no record of any such expenses being allowed after World War I and if any expenses of establishing claims against the War Claims Fund are to be allowed, strict limitations must obviously be imposed, otherwise the Fund may be subjected to a very heavy drain to members of the legal profession

and to architects, engineers, valuers, and other experts. I think that no expenses of establishing claims should be allowed except such reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling claimants to establish their claims as are approved by the Commissioner. Provision for allowance of reasonable expenses incurred in Italy, Hungary, or Roumania, as the case may be, were provided for in the treaties with these countries and for those incurred in Japan in the Allied Powers Property Compensation Law. The expenses approved by the Commissioner should be limited to a small percentage, say 10 per cent of the amount paid to the claimant out of the War Claims Fund, and it should be understood that this percentage is not to be allowed automatically, either in whole or in part.

31. *Claims by partnerships.*

As partnerships are not persons but consist of persons, partnerships should not be allowed to claim. A Canadian having an interest in a partnership should claim on the basis of his interest. There may be charitable associations of a clearly Canadian character as to which special rules will have to be made upon application to the adjudicating tribunal and after report thereupon to the Government, but I know of no claims by such.

32. *Claims by shareholders in corporations.*

It is recommended that Canadians who held at the time of loss, directly or indirectly, ownership interests in corporations or associations which were not Canadians and whose property was lost or damaged by war operations, should be eligible to claim compensation for damage to such ownership interests. For example, corporation A, not a Canadian, owns property in Germany which is destroyed by war operations. Half the shares of corporation A are owned by corporation B which, although incorporated under Canadian law, is not a Canadian as defined above. X, Y and Z, three individual Canadians, own shares in corporation B. They therefore hold, indirectly, ownership interests in corporation A and should be compensated for their respective shares of half the loss. Had corporation B been a Canadian it would have been compensable for half the loss and X, Y and Z would have had no claims as corporation B would be deemed to receive the compensation on behalf of its shareholders.

Property of Canadians as defined above would include ownership interests, held by Canadians, directly or indirectly, in corporations or associations which are not Canadians. Notwithstanding the rule that no compensation should be payable unless it is for damage resulting directly from war operations, compensation should be paid to Canadians, whether individual or corporate, for the damage to their shares in the capital stock of companies which are not Canadians where that damage to the shares resulted from damage to the property of those companies directly caused by war operations. How should such damage to the shares be computed? A question of this kind was given consideration by the United States-German Mixed Claims Commission, as indicated by the following passage from Kieselbach's *Problems of the German-American Claims Commission*, pp. 117 and 118:

"The question, how this loss suffered by an individual by reason of participation in a corporation shall be computed and proved, has apparently been settled neither by judicial decision nor by general principles . . . So it is quite conceivable that the damage suffered by a shareholder by reason of losses suffered by the corporation need not be identical with a fraction of the loss suffered by the company, this fraction corresponding to the ratio of his share to the total capital of the company; that, for instance, the extent of the obligations existing for the company may bring it about that the indemnity owing to the company is absorbed in whole or in

part by payments to creditors of the company, so that the loss imposed upon the company really does not affect the partners but the creditors of the company. It is also conceivable that despite the loss suffered by the company, the commercial or market value of the individual share is not diminished. Hence it is by no means clear how the individual shareholder will be able to compute his share of loss."

It does not appear that the United States-German Mixed Claims Commission laid down any rule for computation of the loss. In my opinion, the only workable rule, a rule which will prove to be substantially just in practically all cases, is that laid down in the treaty with Italy and in the Allied Powers Property Compensation Law of Japan.

Article 78, paragraph 4 (b), of the former is as follows:

"United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9 (a) of this Article, but which have suffered a loss by reason of injury or damage to property in Italy, shall receive compensation in accordance with sub-paragraph (a) above. *This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.*"

Article 11, paragraph 1, of the latter is as follows:

"The amount of damage relating to shares of stock other than those of which the issuing company is an Allied national mentioned in the provision of Article 2, paragraph 2, item (2) or (3) shall be a sum of money, *which is the amount of damage to the issuing company calculated in accordance with the provisions of Article 12, multiplied by the ratio of the amount of the paid up shares of the stock which were owned by the Allied national at the time of the commencement of the war to the amount of its paid up capital at the time of the commencement of the war.*"

In determining the damage to ownership interests held directly or indirectly by Canadians at time of loss in corporations or associations which were not Canadians at time of loss the principles of the italicized passages should be applied.

33. *Claims by the Government of Canada.*

While I am prepared to recommend that the Government of Canada should forego any claim on the War Claims Fund for any part of the general costs of the war, there are certain Government of Canada claims which, in my view, should rank as property claims. These claims are claims by Federal Government departments in respect of property of a non-military nature, such as office furniture and fittings of the Departments of Trade and Commerce, External Affairs, Citizenship and Immigration, National Revenue, National Health and Welfare and the Public Archives lost or damaged during the war, or banking accounts of Government departments seized during the war and not returned after the war. The Government of Canada should be subject to the same priorities as other property claimants, and be treated as one claimant, except where it claims reimbursement of amounts which it has paid out of sources other than the Fund to persons who could have claimed such amounts from the Fund. Where the Government of Canada has already paid a person out of sources other than the War Claims Fund any amount for which that person could have ranked against the Fund either for property losses or for losses from death or personal injuries, the Government should be entitled to claim this amount against the War Claims Fund and have the same priorities in each case that the person paid would have had if he had not been paid and

had claimed against the Fund. Provincial or other governments which are Canadian should, of course, also be permitted to claim in the same manner as the Federal Government.

34. *Claims for business losses arising because the outbreak of war prevented goods from being shipped to certain markets, buyers or consignees.*

In most cases claimants claim the difference between what they eventually received for the goods and what they allege they would have received but for the outbreak of war. Such losses should be regarded as due to the existence of a state of war rather than to war operations. In addition, the claims are somewhat speculative and barely, if at all, distinguishable from claims for losses of prospective profits. The claims should not be allowed. Case 1441, p. 564, *re Fred H. Cowan*; and Case 1444, p. 565, *re Estate of John T. Smith*, in *Reparations*, Vol. II, are in point as precedents.

35. *Miscellaneous claims of one kind and another.*

It is impossible to make detailed recommendations with regard to these and if such recommendations were attempted they would obviously not cover the entire field as one cannot foresee the types of claims that may later be presented. The only recommendation that can be made is, therefore, that the principles set out in this report be applied as nearly as possible.

Valuation of Claims for Property Losses

In the preceding discussion of claims for property losses two distinct types were mentioned, namely "money claims" and "physical assets claims". Of these types the latter, consisting of claims relating to real property or chattels which were lost by destruction or otherwise or damaged by war operations as defined above, constitute all but a relatively small number of the property claims.

Money Claims

Money claims are claims for compensation for loss of cash, bank balances, bonds, other contract debts, and other claims arising from the loss of rights to be paid in money. For example, in some countries bank accounts and other debts due to Canadians were seized or collected by enemy authorities discharging duties comparable to those of our Custodian of Enemy Property. At the end of the war it was found that none or only part of the amounts collected were in the hands of the enemy authorities, and claims have been presented, legitimately enough, for compensation for the loss of the amounts not available. In other cases bank balances belonging to Canadians have been appropriated or liquidated by enemy authorities and, it would appear, in circumstances which leave the banks not liable to the Canadian depositors.

The money which, or the right to which, has been lost is in all or practically all cases the currency of a foreign country, usually a country which was enemy or enemy-occupied. How should these claims be valued in terms of Canadian currency? To answer this question certain assumptions must be made, I think justifiably, as to what would have happened had the loss not arisen. In that case the money or the right to the money would have been available to the Canadian owner of it at the end of the war. While it cannot be definitely said that in all cases and in all countries the Canadian owner of the money or the right to money could not have disposed of it or dealt with it until after the war, I think I am justified in assuming that this normally would have been the case as the Canadian owner would be an enemy of the constituted or occupying authorities and in some countries at least his

bonds, bank accounts, etc., would be subject to sequestration. Money claims, therefore, are based on losses which did not really arise until after the termination of hostilities, and the claimant's true loss was a loss after the termination of hostilities of a sum of money expressed (in the usual case) in what was the local currency of the country at that time. The claimant, it seems to me, should as far as possible be put in the same position as if at the end of the war he had then had the money or right to money of which he had been deprived. If so, the Commissioner's duty should be to determine that amount or the value of that right in local currency and express that amount or value in terms of Canadian currency by the application of an appropriate exchange rate.

The period after the war was in most countries one of economic and financial disruption and the determination of appropriate exchange rates presents problems of great difficulty. The official rate of exchange is not necessarily a reliable guide, since such rates have generally been applied only to certain categories of transactions, mainly concerned with the international movement of goods, which are cleared through the official exchange market. For other types of transactions, including in particular those representing the withdrawal of non-resident capital, the benefit of the official rate was not available. Such transactions were generally effected, if at all, at unofficial or black market rates which placed a lower valuation on the local currency than did the official rate. However, there was as a rule no organized or continuous exchange market for transactions of this type in which rates were publicly quoted; each transaction tended to be a negotiated deal. It has in consequence seemed to me impractical to place on the Commissioner the onus of determining what the effective rates of exchange would have been for transactions of the type here under consideration. However, it is the case that after the devaluation of sterling the "effective" rates of exchange for capital withdrawals from the sterling area and the countries of Western Europe and the currency areas associated with them were brought much closer into line with the official rates than had previously been the case, and I think that ordinarily the official rates after that date might reasonably be applied for converting money claims in these foreign currencies into money claims in Canadian dollars. I recommend, therefore, that in this conversion of money claims where the claims arose from loss of the currencies or rights to currencies the rates of December 30, 1949, as set out in Schedule A, be applied. In this Schedule the rates shown are the official rates for the countries of the sterling area and Western Europe and associated currency areas and are believed to be the "effective" rates for other countries where there was a marked discrepancy between the official and the "effective" rates.

One type of money claim is that of claims for compensation for losses of bearer bonds. As stated above, if a bearer bond is lost the owner is divested of his right. If the bond has been redeemed the owner would, of course, have a valid money claim for the amount paid to redeem it. If it was not subject to redemption or has not been redeemed it is recommended that compensation be on the basis of the average of the market values of the bond at the end of each calendar year from 1945 to 1949, such value to be converted into Canadian dollars in accordance with Schedule A. In cases where the currency of a country has been subject to a so-called currency reform the appropriate replacement factor used in the Schedule with respect to those currencies should be applied in calculating the average market value.

Physical Assets Claims

The question which arises at the outset is whether the cost of restoration, reinstatement, reproduction or replacement of the lost or damaged physical assets at some period after the war should not be adopted as the basis for compensation. This basis is commonly referred to as the replacement basis and is to be used under the treaties with Italy and Japan. This at first might appear to be a fair basis but I have concluded that there are so many objections to it that it should not be adopted. Some of these objections are as follows:

1. The probabilities are that in many countries it would be impossible to arrive with any approximation to accuracy at replacement costs. It is at least uncertain in many cases whether, and when, materials for replacement would have been available in some or all of these countries. Then too, plants destroyed in countries which are now "Iron Curtain" countries might not legally be replaceable by private owners. The dates of Communist ascendancy to power in the following countries were: Roumania, March, 1945; Yugoslavia, January, 1946; Bulgaria, July-November, 1946; Poland, February, 1947; Hungary, June, 1947; and Czechoslovakia, February, 1948. The mainland of China, parts of Indo-China, Eastern Germany, and the former Baltic States of Esthonia, Latvia and Lithuania are under Communist control. In these countries, at least, and probably in others, the cost of replacement, if ascertainable at all in local currencies, often fluctuating in purchasing value, would almost certainly be unascertainable with any approach to accuracy in Canadian currency. The extent of the difficulties will be realized if one considers the task of a Commissioner charged with the duty of ascertaining replacement costs in Canadian currency in any of the countries above named. In addition to the difficulties I have mentioned there is nothing to indicate the possibility of securing satisfactory evidence as to such costs in such countries.

2. For some types of property replacement is obviously an unfair and inappropriate basis. For example, a claimant for compensation for damage to a luxury villa in central Europe might be able to establish a very high replacement cost yet his actual loss on the basis of the reasonable market value of the villa might be very small. The unfairness of compensating such a claimant on the basis of replacement becomes apparent if one considers the case of a claimant whose intention and desire is to remain a resident of Canada and to convert his European assets into Canadian currency as soon and rapidly as possible. Then too, the replacement costs of churches and other religious institutions in China might give claimants an obviously excessive award in view of what is understood to be the status of religious institutions in China at the present time.

3. Replacement cost as a basis for compensation would completely depart from the precedents established after the last war in Canada. At that time value at time of loss plus interest was taken as the basis and not replacement.

4. The replacement basis is not used except in most exceptional circumstances in valuing property losses in actions in the courts of this country. Nor is it in the English courts. (See *Moss v. Christchurch Rural District Council* [1925] 2 K.B. 750).

5. While replacement cost was taken as the basis of compensation under the treaties with Japan and Italy this precedent has little bearing on our present problem because the compensation provided for by these treaties is in local currencies, it is paid by the governments of ex-enemy countries without restriction to a limited fund, and in the case of Italy it is subjected to a 33½ per cent discount.

For these reasons I would reject replacement costs as a basis for valuations. Evidence of them may, however, conceivably be of some assistance to the Commissioner in arriving at valuations on the basis recommended below. Evidence of replacement costs has been admitted in the courts to assist them in determining the value at time of loss or the difference between the money value before the damage and the money value after the damage to the property.

Principle Applied After World War I to Physical Assets Claims

The basis of valuation used after World War I in assessing claims under the Treaty of Versailles and the Treaty of Berlin is well set out in the following citations:

"The Commission holds that in all claims based on property taken and not returned to the private owner the measure of damages which will ordinarily be applied is the reasonable market value of the property as of the time and place of taking in the condition in which it then was, if it had such market value; if not, then the intrinsic value of the property as of such time and place." (Administrative Decision No. III of United States-German Mixed Claims Commission (p. 63) as quoted in Whiteman, Vol. II, p. 1285).

"These rules have been consistently followed by the Commission. . . . Under them the amount of Germany's liability for the material or physical damage of tangible property of every nature has been determined. In computing the reasonable market value of plants and other properties at the time of their destruction, the nature and value of the business done, their earning capacity based on previous operations, urgency of demand and readiness to produce to meet such demand which may conceivably force the then market value above reproduction costs, even the goodwill of the business, and many other factors, have been taken into account. But this is quite a different thing from assessing damage for loss of prospective earnings or profits for a period of years computed arbitrarily or according to the earnings of competitors whose properties were not destroyed, and the awards made by this Commission do not embrace the items claimed of prospective earnings or prospective profits." (Administrative Decision No. VII as quoted by Whiteman, Vol. II, p. 1285).

"The measure of damages applied is the reasonable market value of the property as of the time and place of loss or destruction, if it had such market value; if not, then the intrinsic value of the property. . ." (Report of Commissioner Friel dated December 14, 1927, Reparations, Vol. I, p. 19).

As will be seen, my recommendation will be that these principles be applied to the assessment of physical assets claims. Resort should never be had to any value other than the reasonable market value as the basis of compensation if the assets lost or damaged had a market value. If they did not have a market value, intrinsic value may be used. But as the term "intrinsic value" lacks precision, my recommendation is that in every case where a Deputy Commissioner is of opinion that there is no market value he should state in the decision which he submits to the Chief Commissioner that he has assessed the compensation on the basis of intrinsic value and not on the basis of reasonable market value. As will be seen, it will be part of the duties of the Chief Commissioner to make sure, as far as possible, that the same principles of valuation are applied to cases similar to one another and it will be desirable that he be expressly informed of every valuation made on the basis of intrinsic value so as to reduce to the minimum the possibility of such valuations getting out of line with one another.

It will now be convenient to consider by categories the basis of compensation that should be used.

Losses on the High Seas

Some of the claims are in respect of losses of physical assets on the high seas, such as ships, cargoes, and personal effects and other moveables. With regard to these losses there is, in my opinion, no reason why the precedents established by the Commissioners in Canada after World War I should not be followed. The measure of compensation should be the reasonable market value of the property as of the time and place of loss in the condition in which it then was with interest from time of loss to time of settlement. The property lost on the high seas was in practically all, if not all, cases marketable property and there should be no necessity in any case for the use of intrinsic value, though the possibility of such necessity cannot be entirely dismissed. As the owner of property who lost it at sea could have continued to use it and deal with it and obtain financial benefit from it from the time of loss, had it not been lost, he should receive interest on the reasonable market value from the time of loss. As indicated elsewhere in this report, insurance moneys must be deducted. If the claimant is the owner of a chartered ship and the terms of the charter-party were such that they would have had the effect of reducing the price which the owner could have obtained for it if sold burdened with the charter, the measure of the owner's compensation should be the price for which the ship could have been sold on the market at the time of loss burdened with the charter. If, as to the same ship, the charterer also claims, his compensation (if he has a *jus in re*) should be an amount equal to the difference, if any, between the award to the owner and the reasonable market value of a free ship not burdened with the charter. If the owner of a chartered ship claims in a case where the stipulated hire was more than the current market hire so that the charter was an asset to him tending to increase the price which could have been obtained for the ship by selling it on the market at the time of loss, the owner then really owning more than a free ship, what should be the measure of his compensation? No such case is disclosed by the files but if there should be one, I think the owner's compensation should be limited, as it was after World War I, to the reasonable market value of the tangible thing, namely, the free ship. Fairly considered, this was the extent of the loss inflicted. Any further sum would be in the nature of compensation to the owner for loss of an advantageous bargain with the charterer, which should in my opinion not be compensable. Other questions of comparable difficulty may arise in assessing losses of ships and reference is made to those parts of Administrative Decision No. VII of the United States-German Mixed Claims Commission quoted in Whiteman, Vol. II, pp. 1286-1288, which will furnish helpful guidance to the adjudicating tribunal.

Losses on Land

With regard to losses on land the general principle, subject to the modifications set out below, should be as follows:

1. Where the loss is total the measure of compensation should be the value of the property at the time of loss.
2. Where the loss is partial the measure of compensation should be the difference between the value of the property immediately before and immediately after the injury.

This is the normal measure of damages in actions for injury to land in the civil courts. The measure of damages is the diminution in the value of the land or of the plaintiff's interest in it and not the sum which it would take to restore it to its original state. (See Mayne on Damages, 11th. Ed., p. 462). It is the difference between the money value of the claimant's interest in the property before the injury and the money value of his interest after the injury.

I realize that there have been variations in the application of this principle even in the civil courts and even as applied to damage to real property, and in particular that while the measure for damages for the wrongful taking or destruction of a chattel is ordinarily the value of the chattel at the time of the act (Mayne, p. 416; Halsbury, Vol. 10, pp. 136-138) the measure for damages for partial loss of a chattel or damage to it as distinguished from destruction of it is often the cost of repairing it, the difference in value between the former worth and that of the chattel when repaired, and the damage sustained owing to loss of use of the chattel while being repaired (Mayne, p. 440; Halsbury, Vol. 23, p. 726). But I do not recommend that these variations from the principle first laid down should be made in assessing war claims. The compensation allowed should be the value at time of loss in the case of complete destruction or loss and where this is incomplete the difference in the values before and after the act which caused the damage. In practice it may be found that in cases of partial loss the most convenient way of arriving at the difference in value before and after the injury would be to estimate the damage as a percentage of the total value of the property and fix the compensation accordingly. For example, if an act of war damages built-upon real property so that half of its value has gone, half the value before the damage is equivalent to the difference in values before and after the damage was done. As will be seen below it will, I think, be necessary to take a fictional or notional date as the date of losses on land of physical assets for reasons which will be explained but the principles applicable to the determination of the compensation should, though related to that date, be those which I have outlined.

The word "value" often presents great difficulties. Whiteman, Vol. II, pp. 1548 and 1549, says:

"Rules stating that the fair value, the inherent value, the actual value, the actual cash value, the actual value to the owner, or the real value are to be allowed, are frequently enunciated in connection with broad generalizations on the subject of damages. If these phrases mean that value is inherent in the thing itself, they are in the main misleading, for value is relative. It is futile to attempt to demonstrate the "real meaning" of such terms. They are variously used with varying shades of meaning, depending upon the person using them. The language adopted often purports to lay down rules for the measurement of damages when what is expressed is only an ideal or aim to be approximated.

Finally, it may be said that whether only one of these terms is used, or a combination of them, in describing the amount arrived at or the method of determining that amount, it will be evident from the context of the decisions in the various cases that the amount allowed in any case should be that to which the claimant is reasonably entitled under all the circumstances."

The rule laid down in the last paragraph cited is not particularly helpful. I think greater definiteness is possible. While "value to the owner" may be the measure of compensation in expropriation cases and in some civil actions of tort, I find it hard to apply to war claims. An owner's circumstances where he is an alien property owner—alien to the country in which the property is situate, or to the power occupying that country—are peculiar and I am afraid that to conduct inquiries into such questions as what a prudent Canadian in the position of the claimant would have been willing to give for property in an enemy country sooner than fail to obtain it would produce strange results if applied to all claims for losses on land. Among property losers were doubtless those who desired intensely to liquidate their properties and remove the proceeds to Canada. There were doubtless others who were eager to retain their

investments abroad. For Commissioners to inquire into desires and intentions would, if not futile, yield many unreliable results. On the other hand to ascertain the reasonable market value of property, provided it is related to a suitable date, would in most cases, I believe, be feasible. In my opinion the rule should be that in all cases where there were market values the values sought for should be the reasonable market values—that value should be taken as meaning reasonable market value. There may be some forms of property as to which some departure from this concept of value may be necessary. For example, a church or religious institution may, as such, have no market value. It is suggested that in the case of a church, if there is no ascertainable market value, the adjudicating tribunal in determining the intrinsic value might take into account subsequent events and value such institutions with these in mind. If, for example, conditions in a country became such that churches a few years after the damage was inflicted had no value, or practically no value, to church authorities, because the civil authorities have decided not to let them function in the country, the value for use for a limited period might be the proper method of valuation. The kinds of property for loss of or damage to which claims have been or may be filed are so numerous that it is impossible in a report of this kind to make recommendations covering every situation that may arise. But if reasonable market value is taken as the basis of valuation to be adhered to just as strictly and rigidly as possible, and all decisions of Deputy Commissioners are reviewed by the Chief Commissioner as recommended below, a reasonable degree of consistency between awards can, I think, be achieved.

The question now arises as to whether value at the actual rather than at what may be called a notional time of loss should be adopted for losses on land as well as at sea. Most, if not all, of these losses on land took place in countries which were either enemy or enemy-occupied. Two difficulties arise in taking reasonable market value at actual time of loss in such cases. The first is that the financial and economic instability and disruption in these countries during the period when the loss took place would make the ascertainment of a “reasonable” market value generally impracticable. The second difficulty is that even if such reasonable market value could be ascertained such value could not be converted into Canadian money because there would not be at that time any ascertainable fair rate of exchange between the local currency and Canadian currency. It is therefore necessary to assume for valuation purposes that the loss took place either before or after the war, and to make valuations on a pre-war or a post-war basis. The words “pre-war” as far as hostilities in the Far East are concerned should be taken as meaning June 30, 1941, and as far as hostilities elsewhere are concerned as meaning June 30, 1939. While some European countries did not enter the war until after September, 1939, there was a general unsettlement of financial and economic conditions in all such countries following the outbreak of war in September, 1939. Moreover, as valuations can only be approximate in any event, the difference between attempting to arrive at valuations as of prior to September, 1939, and as of varying dates in 1940 and 1941, is not great. The selection of a specific date for the Far East and a specific date for other areas in the world has the advantage of definiteness and narrowing the range of investigation of market values.

After much consideration I have come to the conclusion that the pre-war basis of valuation should be used. The meaning of “pre-war basis” should be more closely defined. As to physical assets losses in the Far East it means that the property lost or damaged be given the reasonable market value which property identical as to location, age, state of repair and condition and otherwise at the actual time of loss would have had on June 30, 1941; and that as to losses elsewhere it be given the reasonable market value which property identical as to location, age, state of repair and condition and otherwise at the actual

time of loss would have had on June 30, 1939. Where the property was owned by the claimant prior to the war its pre-war reasonable market value less depreciation to actual time of loss could often be taken. The valuation so obtained could then be converted into Canadian currency at the pre-war rates of exchange. These rates are set forth in Schedule B for those countries to which the date of June 30, 1939, is applicable, and in Schedule C for those to which June 30, 1941, is applicable.

In the case of losses which can receive a pre-war valuation directly in Canadian dollars the application of an exchange rate will not be necessary. Examples of such losses would be the many chattels purchased in Canada or the United States before the war and having a definitely ascertainable value in Canadian money on the dates mentioned.

I will now give the reasons why the pre-war basis of valuation should be used.

At the outset it should be said that if it were possible to value the losses as if they took place shortly after the termination of hostilities it would be desirable to do so. For many, if not most, Canadians who suffered property losses during the war these losses did not become real losses to them until after the conclusion of hostilities. While it cannot be said with certainty that in all cases claimants could not have used or dealt with the lost or damaged property during the war had it not been lost, it certainly cannot be said that generally, at least, Canadians whose property in enemy or enemy-occupied countries was lost during the war would have been free to use or deal with it had it not been lost. Such property would have been enemy property in the country of loss and in various countries there were special measures, such as the Trading with the Enemy Acts in the United Kingdom and Canada, under which property of enemy nationals could be sequestered. In some countries it was not the practice—indeed it was not the practice under our Trading with the Enemy Act—for custodial authorities to account to the owners for interest earned on assets while in custody (although in Canada there was an accounting for revenue earned on assets prior to liquidation). On the whole, and having in mind the undesirability of involving Commissioners in lengthy hearings as to varying practices in various countries, I think the principles governing compensation should, as far as possible, be based on the assumption that no financial benefit would have accrued to the Canadian loser of property, if it had not been lost, until the end of a reasonable period after the end of hostilities. This, of course, is a reason for not compensating for loss of use of property, whether lost or damaged or not, and it is a reason for not allowing interest on awards except from a reasonable time after the termination of hostilities which I would fix as January 1, 1946, both for physical assets claims and for money claims for losses on land abroad. It was then that the real loss occurred.

But I am afraid that if an attempt were made to determine reasonable market values in most countries as of January 1, 1946, or as of any date after the war to be applicable in all countries of loss, the result would be so inequitable as to be worthless for practical purposes. Account must be taken of such factors as fluctuations in the purchasing power of currency, monetary reforms, nationalization, unstable political conditions, shortages of materials and so forth. Moreover, the ascertainment of suitable exchange rates would be so difficult as to be practically impossible. A very late date might be taken but this would prove unsuitable for countries where widespread nationalization had taken place and there might be no market value for the property destroyed during the war. I feel driven, therefore, to the recommendation that the pre-war basis of valuation be adopted. This will be disadvantageous to claimants in one respect. It will not permit any wartime inflation of values to be reflected in the valuations as they will be in the case of losses on the high seas. But the pre-war basis

has an important advantage to many claimants. It gives them an assumed market value as a basis for their claims whether the property lost would have had any value to them after the war or not. When it is remembered also that payment of compensation is to be in Canadian money, thus enabling claimants to withdraw their capital from many countries from which they could not have withdrawn it during the post-war period, at least except without heavy loss, the pre-war basis appears to be at least sufficiently favourable to claimants. While it cannot be said that all claimants would, had their losses not taken place, have desired to withdraw their assets or their cash equivalent from the country of loss to Canada, this would obviously have been true of many and, I think, of most of them. To such the privilege of securing compensation in Canadian money for foreign losses is a valuable one and places them in a better position than Canadians having the same desire whose property has not been lost or damaged. It may be thought that awards on a pre-war basis should be subject to the application of a coefficient as in the case of Belgium and France after World War I and as in the case of Belgium after World War II. I recommend against the application of any coefficient for the reasons given in 2 (vii) below.

Apart from advantages and disadvantages to claimants of adoption of the pre-war basis, this basis has several points in its favour from the standpoint of precedent, administrability and equity. These are as follows:

1. Market conditions affecting the purchase and sale of property may be presumed to have been much more stable on June 30, 1939, or June 30, 1941, as the case may be, than after the war, and the ascertainment of reasonable market values as of these dates would, therefore, be more feasible.

2. While the precedents are not all in favour of taking the pre-war basis there are many precedents for doing so among which are the following:

- (i) United Kingdom Extended Far Eastern Private Chattels Scheme (War Damage), introduced in June, 1949. Provides limited compensation for United Kingdom British subjects who sustained losses in certain territories in the Far East and who have returned to reside permanently in the United Kingdom. Claimants were required to value property lost as at June 30, 1941.
- (ii) Scheme of the Malayan War Damage Claims Commission, introduced in 1946. Provides for compensation for damage to or losses of property in Malaya between December 8, 1941, and March 31, 1946, and for compensation for property requisitioned prior to the Japanese occupation. Claimants were required to base their claims as accurately as possible on prices current on June 30, 1941.
- (iii) Scheme of the War Damage Claims Commission for North Borneo, Sarawak and Brunei, established in 1947. Provides compensation for war damage to and losses of land, buildings and goods, between December 8, 1941, and March 31, 1946. Claimants were invited to formulate their claims by reference to prices current as of June 30, 1941.
- (iv) Scheme of Compensation for War Damage in Belgium, introduced in 1947. Claimants were required to state values as at August 31, 1939. A coefficient was, however, provided for.
- (v) Scheme of Compensation for War Damage of the Netherlands, introduced in November, 1945. Provides compensation for war damage to real estate, moveable properties, and household furniture in the Netherlands. Compensation is determined on the values existing on May 9, 1940, except compensation for damage to supplies for trade and industry which is calculated on the cost price.

- (vi) Scheme of the United Kingdom Foreign Compensation Commission. This Commission was constituted in 1950 to administer the funds to be received from Yugoslavia and other countries for compensation to persons who had lost properties through nationalization. Claimants for losses in Yugoslavia were required to supply particulars as at January 1, 1939, the Commission stating that that date had been chosen as the latest on which conditions in Yugoslavia are understood to have been normal.
- (vii) The method of calculation of war damages both in France and Belgium after World War I was to assess the value of the damage as at August 1, 1914, and then in cases where reinstatement was encouraged for public reasons to grant sums designed to cover the subsequent rise in prices.

These sums were calculated by applying various coefficients to the 1914 value assessed. In my opinion, the application of coefficients would be inappropriate here, not only because of the complete impossibility of arriving at fair ones for the various countries and for the various types of property in these countries, but because of the very substantial advantages which will accrue to most claimants from receiving their compensation in Canadian money computed by the application of relatively high pre-war exchange rates and in receiving compensation even though there may not have been a post-war market for the property lost.

3. Many claims have already been presented on the pre-war basis as it was the only practical basis on which those claims could be calculated.

I may add that I have considered whether the basis should not be pre-war valuation of the loss in local currency converted to Canadian dollars at the exchange rates of December 30, 1949. At first glance this would seem to equate the treatment of property loss claimants to that of money loss claimants. However, it would be much less favourable than the treatment of shipping loss claimants, who, I think, in the interests of stability of compensation practice, should be treated as after World War I. Moreover, since I consider that the real loss occurred in the post-war period, post-war valuation, if practicable, would be called for if post-war exchange rates were used. Post-war valuation is not generally practicable. So I am driven to recommending the basis which provides the closest approach to what is desirable and which is most equitable as between all claimants for loss of or damage to physical assets, namely, pre-war valuation and pre-war exchange rates.

Effect of Recommended Valuations of Physical Assets Claims and Money Claims

Because of the great differences in purchasing power of local currencies in various countries between 1939 and 1949 which must be combined with differences in the exchange rates between the local currency and Canadian dollars, it is most unlikely that my recommendations would have exactly the same effect in respect of similar losses in any two countries. Despite this I feel that an illustration of their effect should be given and I have chosen Italy as a typical case which could be applied with variations to other countries or even to Italy with a different type of property. Suppose that in 1939 four Canadians had assets in Italy. A and B each had physical assets worth 100,000 lire, and C and D each had 100,000 lire in cash or money assets. Assuming that these assets could have been converted into Canadian dollars in that year each would have obtained \$5,278. (See Schedule B).

During the war A's property was completely destroyed in an air-raid and C's cash was lost in a way that would make him eligible for compensation. After the war B's property was returned to him undamaged and D was able to gain control of his cash again. A and C have war claims, B still has his property which is worth 4,750,000 lire or \$8,375 as of December 30, 1949, (see Banco di Roma's Review of the Economic Conditions in Italy for September, 1950, p. 431, for changes in internal price levels between 1938 and 1949 and see Schedule A), and D still has his 100,000 lire which was worth only \$176 if he could have converted it into Canadian dollars in 1949. (See Schedule A).

A's claim if valued in accordance with my recommendations is valued at \$5,278 and he will be allowed interest from January 1, 1946. While this is a lesser amount than the dollar equivalent of B's undamaged and formerly similar property it is, as I have pointed out, a pre-war value and pre-war values can be ascertained in the great majority of the cases, taking countries of losses as a whole, while many post-war values cannot. While A receives less in dollars than the dollar sum representing the value of B's property he has the great advantage of getting dollars for his foreign property which many owners of undamaged property would be only too glad to receive. Thus the loser of physical assets while receiving a lower dollar equivalent has the advantage over the non-loser of being able, in effect, to export his capital plus interest. Similarly, C who would be awarded \$176, with interest, enjoys a considerable advantage over D whose lira bank account, while equivalent to \$176, is probably available for use only in Italy.

While the conversion plan suggested may appear too favourable to the loser of physical assets as compared to the loser of money, or not favourable enough to the latter as compared to the former, it must not be overlooked that since 1939 it has been one of the fortunes of the times that holders of many types of physical assets have gained relatively to holders of money assets. This is the case in Canada as well as in other countries—it is one of the facts of economic life which have been experienced by many Canadians with property and cash in Canada. For these reasons I see no justification for the use of pre-war valuation of money claims if by valuation is meant the valuation of local currency as such and as distinguished from the valuation of what it will purchase. Assuming that physical assets are to be given pre-war values to be converted at pre-war exchange rates, and it is sought, while using a pre-war valuation in reference to money claims, to equate the treatment of money claimants as closely as possible to that of physical assets claimants, it seems to me that logically the course illustrated by the following hypothetical example might properly be followed. Assume the money claim to be for 10,000 units of local currency. Ascertain how many units pre-war would have bought what 10,000 units would buy post-war. Say this number as so ascertained is 1,000 units. Convert 1,000 units into Canadian dollars at pre-war rates of exchange. If the exchange rate has varied proportionately with the variation in the internal price level the figure resulting from the conversion will be exactly the same as if the 10,000 units were converted at post-war rates. To the extent that the changes in exchange rates have not kept pace with the upward changes in internal price levels, the money claimant is favoured by the course recommended as compared with the course just outlined as the logical one to be followed if pre-war valuation were used in reference to money claims.

It is one of the features of the conversion plan recommended that the money assets loser does as well at least as the non-loser of money assets and because of his ability to receive dollars as well as interest will generally do better.

In effect, my recommendations, if adopted, will tend to reduce the discrepancy which has generally developed over the period since 1939 between the values of the holdings of owners of physical assets on the one hand and the

values of the holdings of owners of money or rights to money on the other. I can see no justification for reducing this difference further. It is manifestly impossible to compensate Canadian owners of money assets all over the world any more than to compensate Canadians in Canada itself for the loss in purchasing power of their money. So, I cannot recommend treatment of the loser of money assets more favourable than that which I have recommended—indeed, as previously pointed out, in most cases he will be better off than the non-loser.

It should be added that in cases where compensation is otherwise provided for there will be the problem of determining the amount in Canadian dollars with which the claimant should be debited as against his admissible claim where such compensation is provided in other than Canadian currency. What exchange rate is properly applicable? While it is impossible to foresee exchange rate developments the general rule should, in my opinion, be that the principles underlying the choice of rates in Schedule A should apply, but with reference to date of receipt of the compensation otherwise provided for in each case, provided, however, that where (as in the case, for example, of the *S.S. Athenia* payments by the United Kingdom Government) the compensation shall before the adjudication have been actually received and converted into Canadian currency, the Commissioner may debit the claimant with the amount which actually became or becomes available to the claimant in Canadian currency.

Classification of War Claims

The terms of reference require a classification of war claims and an estimate of the number of each class and of the total amount of such claims. The information called for by this requirement is nearly all to be found in the foregoing parts of this report. The following additional information should, however, be given.

The number of claimants for compensation for property losses as disclosed by the files whose claims are *prima facie* valid is approximately 1,050. The number of persons who died and for compensation for whose deaths claims are disclosed by the files which are *prima facie* valid is approximately 25. The number of claimants for compensation for personal injuries as disclosed by the files whose claims are *prima facie* valid is approximately 90. It should, however, be added that there are very few claims on the files for compensation for personal injuries caused by maltreatment and it may very well be that the figure of 90 will be substantially increased. The number of persons interned in Japanese-operated internment camps in the Far East was as follows: prisoners of war approximately 1,750 as stated earlier, civilians approximately 800 including approximately 25 merchant seamen. The number of civilians detained otherwise than by internment in the Far East is believed to have been approximately 300.

The number of persons interned or detained elsewhere in respect of whom maltreatment awards will be payable under the foregoing recommendations is entirely uncertain both as to prisoners of war and civilians. There were, however, approximately 6,500 prisoners of war and 1,200 civilians interned in areas other than in the Far East. The number of civilians detained otherwise than by internment in such areas is believed to be approximately 1,000. The war claims for property losses excluding those by claimants apparently not Canadian at time of loss total approximately \$50,000,000. (Parts of many of these claims are not admissible under the foregoing recommendations and no helpful estimate can be given of the total sum represented by the inadmissible portions of the claims). The claims for compensation for death total approximately \$550,000. (This total gives no indication, even approximate, of the

total of the claims admissible under the foregoing recommendations). The claims for compensation for personal injury total approximately \$260,000. (This total gives no indication, even approximate, of the total of the claims admissible under the foregoing recommendations).

No helpful estimate can be given either of the total amount of the maltreatment claims on file or of those which will under the foregoing recommendations be allowed.

It should, of course, be borne in mind that the total amounts claimed under each category as shown above will very likely be increased by claims to be received later.

Priorities

In the terms of reference there is a direction to recommend the priorities, if any, that should be established for payment of classes of claims and classes of claimants. I recommend that the claims be paid in the following order of priority:

- (1) Claims for compensation for death and personal injury in full, or if the Fund is not sufficient to pay them in full, then *pro rata*.
- (2) Claims for compensation for maltreatment in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (3) Claims for compensation for property losses up to \$5,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (4) All remaining claims for compensation for property losses up to an additional \$10,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (5) All remaining claims for compensation for property losses up to an additional \$15,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (6) All remaining claims for compensation for property losses up to an additional \$20,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.
- (7) All remaining claims for compensation for property losses in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

I have been asked to recommend the maximum sum of compensation, if any, that should be prescribed in relation to any class of war claims or claimants. I have concluded that if the foregoing order of priority is observed it is not necessary to prescribe a maximum sum of compensation (other than the \$1,400 ceiling on maltreatment awards recommended earlier).

In my opinion, the funds available in the War Claims Fund will be much more than sufficient to meet the death, personal injury and maltreatment claims in full. How much will be available for distribution among property loss claimants is uncertain. I would expect the Fund to be sufficient to pay most or all of the claims up to the limits stated in headings (3) to (6) inclusive in full but that if any funds are then left a *pro rata* distribution or dividend under heading (7) will be necessary. Whether a further amount should be provided by Parliament to meet any unpaid residue of claims is a matter upon which I am not authorized to make a recommendation.

The reasons I recommend the foregoing order for priority of payment of claims are as follows. In my view the losses falling on individuals by reason of death or personal injuries represent a heavier loss to the persons affected

than the losses resulting from loss of or damage to business assets or investments. The claims for maltreatment are not for pecuniary losses and should rank after the death and personal injury claims. At the same time they partake of the nature of injuries to the person and should rank either in priority to the property claims or *pari passu* with such claims. On balance I think it would be advisable to let them rank ahead of the property claims. To do so has a great practical advantage in that payment of them may then in all probability take place shortly after the death and personal injury claims have been adjudicated instead of awaiting adjudication of the property claims, and with no difference in the end because it is altogether likely that the first priority of property claims can be paid in full. As to the property claims generally, while the loss of personal effects or of some kinds of real property such as homes may represent a heavier loss to the persons affected than the loss of business assets and investments, it is, in my view, impracticable to differentiate between different types of property losses for priority purposes. Property losses grade into one another and the arrangement of the priorities in the steps or stages suggested protects those who have suffered small property losses from too onerous a sharing of the Fund with those who have suffered large property losses. It has already been indicated as one of the principles upon which war claims should be paid that compensation should be designed to meet losses caused by the war of a specific nature falling heavily on a few individuals and not of a kind that falls on large classes of the community or the community as a whole. I consider it proper, therefore, in establishing a priority for payment of these claims to apply this principle to the claims themselves. As far as practicable, the losses which fall most heavily upon and affect most seriously the persons sustaining the losses should be paid first.

Account must be taken in each priority of satisfaction otherwise provided for (or already provided out of the Fund). For example, a claimant has a total admissible claim of \$10,000 but has received, or will receive, satisfaction from sources other than the Fund to the extent of \$5,000. If there were enough to pay claims only up to the limit set in priority (3) this claimant would receive nothing. He therefore will not share in priority (3) at all. He will, however, share in priority (4) if more funds are available.

Assuming that the recommendation is accepted that property claims should be paid on a basis of successive priorities, one of \$5,000, one of \$10,000, one of \$15,000 and one of \$20,000, account being taken of any instances of satisfaction otherwise provided for, it remains to examine how this will work out in practice.

Claimant A has sustained a valid war loss in China which is the equivalent of \$6,000. Claimant B has sustained an identical loss in the Philippine Islands, but in his case he has received the equivalent of \$500 from the Philippine War Damage Commission. Claimant A, having received no compensation from any source, will receive the full \$5,000 under priority (3). Claimant B will receive \$4,500 from the War Claims Fund under that priority, the equivalent of \$500 received from the Philippine War Damage Commission being taken into account. Should funds be available to pay property claims up to \$15,000 then each of these two claimants will subsequently receive an additional \$1,000.

The next question to be considered is whether priorities are to be set up on the basis of claims or on the basis of claimants. For example, if a claimant has sustained a property loss in two countries, does he have separate priorities of \$5,000, \$10,000, \$15,000 or \$20,000, as the case may be, in respect of each of the two losses? Or if a claimant sustained two unrelated property losses on different dates in the same country, or losses of different species of property on the same date in the same country, how is he to be treated? Again, a shipping company loses three different ships on different dates. Should the company be given one priority only or what in effect are three priorities, one in respect of

each of the three losses? Upon consideration I have come to the conclusion that the priority should be given to the claimant *quâ* claimant and not to the claim *quâ* claim. This is because while there is little difficulty in determining what constitutes one claimant it is almost impossible to lay down satisfactory rules as to what constitutes one claim.

Where husband and wife have both claimed I recommend that each should have a priority. Where the claimants are two or more executors or administrators of an estate of a deceased person, only one priority of \$5,000 (or as the case may be) should be allowed. Applying the same principle, where a person who, if he had lived, would have had a claim has died and on his death the claim survives for the benefit of his heirs who are, let us say, three in number, I recommend that each of the three heirs have a priority of one-third of \$5,000 (or as the case may be). To recommend otherwise would be to establish priorities depending on whether or not the person sustaining the loss is living or dead, a consideration which is, or should be, an irrelevant factor. The only proper basis, I think, is the priority which the deceased himself would have received, had he still been alive at the time of the award on the claim.

A more interesting and difficult problem arises in connection with priorities for shareholder claims. If my recommendations on corporation and shareholder claims are accepted some corporations will be eligible to claim and some will not, while some shareholders will be eligible to claim and others will not. Suppose, for example, corporation X, a non-Canadian corporation, has sustained war damage to the extent of \$100,000 and there has been no satisfaction from local sources. At time of loss two corporations in Canada, Y and Z respectively, each held 25 per cent of the share capital of X. This would mean, if both Y and Z were eligible to claim, that each would have a claim for \$25,000. However, let us suppose that Y at time of loss was a Canadian and therefore eligible to claim, whereas Z is not a Canadian and therefore not eligible to claim. As Y is eligible to claim, shareholders in Y are not eligible to claim, whereas any shareholders in Z who were Canadians at time of loss are eligible to claim. Let us suppose that at time of loss A and B, individual shareholders, each held 25 per cent of the share capital of Y. Neither A nor B is eligible to claim. At time of loss C and D, individual shareholders and Canadians at that time, each held 25 per cent of the share capital of Z. Each, therefore, would have a claim for one-quarter of \$25,000 or \$6,250. The first priority is a payment of \$5,000 on all property claims. Do corporation Y and shareholders C and D in corporation Z each enjoy a priority of \$5,000? If all property claims can be satisfied up to \$30,000 no problem will arise as corporation Y will receive \$25,000 and shareholders C and D in corporation Z will each receive \$6,250. But let us suppose that there is every reason to assume that at the most property claims can be paid up to \$5,000. If Y, C and D were each to receive \$5,000, A and B would in effect be discriminated against merely because Y happened to be able to claim. The solution lies in paying C and D each \$1,250 on the first priority of \$5,000 as \$1,250 is half of what Y, in theory, receives on behalf of A and B together. This would mean that the claims of C and D would finally be satisfied only if all property claims are paid up to \$30,000, and in theory A and B are in the same position. True enough, Y receives \$25,000 at the same time that C and D have only received \$6,250 each, but this represents the full extent of the claims in each case. Even if a priority of \$30,000 cannot be reached there is no discrimination between A and B on the one hand and C and D on the other. Y has always received double what C and D together have received, but this arises due to the fact that aliens or non-Canadians at time of loss held 50 per cent of the share capital in Y. The indirect compensation of such persons could only be avoided by eliminating corporation claims entirely and only admitting shareholder claims, which I cannot recommend for reasons already given.

I should add that for priority purposes I do not think that interest and expenses allowed for establishing claims should be taken into account. If, for example, the principal of an award to a property loss claimant is \$5,000 the third priority would give him priority for \$5,000, interest thereon, and such expenses of establishing his claim, if any, as are allowed him.

In an earlier part of this report it was stated that the question whether there should be ceilings on awards for death and personal injuries would be dealt with under the heading "Priorities" and I now wish to deal with it.

The suggestion to be considered is that the amount payable as compensation for death or for personal injuries be limited in every case to an amount equal to the capitalized value of the pension which would have been payable under the Pension Act if the person killed or injured had been a member of the armed services. As pension awards vary with rank the adoption of such a ceiling would involve a classification of those for whose deaths or injuries compensation is claimed into assumed or notional ranks. One reason for a ceiling is the priority which is recommended for payment of death and personal injury claims. If a few awards are made in respect of death and personal injuries of sums far in excess of any sums which under the system of priorities recommended can be awarded to the smaller property losers, complaints of discrimination may arise. If circumstances of this kind should develop it would seem desirable either (a) that ceilings as suggested above be imposed, or (b) that the priorities system be changed so that death and personal injury claims, maltreatment claims and property claims will all be paid *pari passu*, the scale of priorities suggested for property claims being applied to all claims, or (c) that both (a) and (b) be done. As there are obvious objections to all of these alternatives and the circumstances pointing to the desirability of adopting any of them may not arise, I am recommending that none of them be adopted before the time limit for delivery of the claims is past. At that time, or later after some of the claims are adjudicated by the Deputy Commissioners, it may appear desirable either that ceilings be imposed on the death and personal injury claims or that the recommended priorities system be changed, or both. For this reason I do not think that the code of rules suggested below should, in so far as it negatives ceilings or establishes priorities on death and personal injury claims and then on maltreatment claims over property claims, be adopted until the time limit for claims is past or somewhat later after there has been a sufficient number of adjudications by Deputy Commissioners to indicate the probable amounts which in the absence of ceilings would be awarded for the larger death and personal injury claims. This report is written on the assumption that there will be no ceilings and no changes in the system of priorities recommended, but despite that fact it should be understood that I am not recommending against such ceilings or changes in the system of priorities if the developments mentioned above as possible make them desirable.

I should add that as the selection of figures for the priorities recommendations is largely arbitrary, I would see no objection in principle to the insertion, if thought fit, between (6) and (7) above of another priority provision to read as follows:

"All remaining claims for compensation for property losses up to an additional \$50,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*."

Claims up to \$100,000 instead of \$50,000 would then, in certain circumstances, have priority. Whether this limit should be \$50,000 or \$100,000 is in my view an evenly balanced question but I would definitely recommend against making it any higher than \$100,000.

Interest

As my recommendation will be that interest be allowed as an element in awards of compensation arising from death, personal injuries and loss of or damage to property, it is necessary to state at the outset the rate of interest that should be allowed. Prevailing rates have varied since September, 1939, and I think that 3 per cent *per annum* would be a fair average and should be applied in all cases where interest is payable.

The subject of interest was given considerable attention by the Commissioners after the last war and I quote the following from Commissioner Friel's report dated December 14, 1927, *Reparations*, Vol. I, pp. 19 and 20:

"In the matter of interest this Commission has not given consideration to any particular system of law. Interest in this country as a general thing is not recoverable except by statute or under agreement, and it is not allowed in actions for damages *ex delicto*, that is to say actions arising from losses independent of contract. At the same time it may be said, broadly speaking, in the words of counsel that the claim is a legal claim under the civil law, under the common law as developed in the United States, and under the common law of Great Britain except in so far as modified by express statute. It has always been allowed in maritime cases. Dr. Pugsley recommended that interest should be allowed from the date of the ratification of the Treaty, that is January 10, 1920, until the date of settlement. He fixed that date he said as applicable to all wrongs whether they were personal or injuries to property because on that day it seemed to him Germany became bound by a contract, and what was to that date a tort became converted into a contractual obligation. He thought it better to make it uniform as to date because torts do not ordinarily carry interest as such, but when they become contracts then he thought interest should necessarily follow. By reason only of its seeming fair I have followed this course in respect to unliquidated damages covering claims for losses based on personal injury, death, maltreatment of prisoners of war or acts injurious to health; but where the loss was either liquidated or the amount thereof capable of being ascertained with approximate accuracy through the application of established rules of computation merely, as of the time when the actual loss occurred, I have recommended interest from the date of loss. This covers property losses being claims for property taken, damaged or destroyed. It seems to me to be only just and equitable. The measure of damages applied is the reasonable market value of the property as of the time and place of loss or destruction, if it had such market value; if not, then the intrinsic value of the property, but as compensation was not made at the time of loss the payment at a later date of the value which the property had at the time of loss would not make the claimant whole. He was *then* entitled to a sum equal to the value of his property. He is *now* entitled to such sum plus the value of the use of the money for the entire period during which he was deprived of its use, otherwise interest, if he is to receive full compensation. Five per cent was the rate of interest prescribed by Paragraph 16 of Annex II to Section I of the Part VIII of the Treaty of Versailles, by which interest is debited to Germany as from May 1, 1921, in respect of her debt as determined by the Reparation Commission, and in fixing that date it was provided that account might be taken of interest due on sums arising out of the reparation of material damage as from November 11, 1918, up to May 1, 1921."

As compensation for death is to be on the basis of pecuniary loss alone and the loss would substantially take place in the ordinary case immediately after the death, a claimant for compensation for death should be paid interest on the principal amount of the award from the date of the death except on such parts of that principal amount as are analogous to special damages, which should bear interest only from the respective times of disbursement by the claimant or those through whom he claims, and except in cases of claims for compensation for death in internment. A claimant for compensation for death in internment should be paid interest from the date when the deceased would normally have been liberated from internment had he been alive (because the loss did not take place until that time) but subject to the exception that if any part of the amount paid is analogous to special damages such part shall bear interest only from the time when the disbursement was made by the claimant or those through whom he claims.

For similar reasons, a claimant for compensation for a personal injury should be paid interest on the amount of the principal from the date of the personal injury (or if it was inflicted by maltreatment in internment or detention, from the date of liberation) except on such parts of the principal as are analogous to special damages, upon which interest should be paid only from the respective times of disbursement by the claimant or those through whom he claims.

For the reasons indicated in the sections dealing with property losses and valuations, a property loss on the high seas should be deemed to have taken place when the property was physically lost or damaged and the award should bear interest from the date of that loss or damage. But all other property losses should bear interest only from January 1, 1946. The reason for not allowing interest from an earlier date is the assumption that as a general rule the property, if it had not been lost or damaged, would, being normally in enemy or enemy-occupied areas, not have yielded financial benefits to the owner until the end of a reasonable period after the termination of hostilities. This consideration does not apply to losses on the high seas. While conceivably there may be good claims for losses not on the high seas and not in enemy countries or enemy-occupied areas, none appear from the files and I think January 1, 1946, should be accepted as the universally applicable date for losses not on the high seas.

As to compensation for maltreatment, as distinguished from personal injuries arising from maltreatment, I recommend that no interest be paid as the maltreatment awards are not to be made on the basis of pecuniary loss.

Interest in all cases should run to time of settlement and should not be compounded.

The propriety of allowing interest on compensation for personal injuries and death may be questioned. As Commissioner Friel says in the passage above quoted, interest is not allowed in actions for damages *ex delicto* in the courts of this country. At least this is the general rule. However, the English courts have power under section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, to allow interest in any proceedings tried in any court of record for the recovery of any debt or damages. Under that Act the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit, on the whole or any part of the debt or damages, for the whole or any part of the period between the date when the cause of action arose and the date of judgment. There are several reasons why compensation for personal injuries and death should include an element of interest. For one thing, if it be admitted that interest from time of loss

is a proper element of compensation for property losses, it is hard to see why a similar rule should not apply to losses caused by personal injury and death as the compensation to be paid is limited to pecuniary loss just as in the case of property losses. The allowance of interest on property losses from time of loss seems to have been recognized after the last war by all Commissioners as appropriate and just. Indeed, the justice of it is apparent when one considers the long delay which inevitably there has been and will be before the losses are settled, a delay which applied to the death and personal injury claims as well as to the property claims. Then too, interest was allowed as an element of compensation in the claims for death and personal injury asserted after World War I and some of the later awards included very large proportions of interest. I think that interest should be included as an element in compensation for the pecuniary loss resulting from death and personal injuries but it must be admitted that the question as to the date or dates from which this interest should run is debatable. It may be that an arbitrary date, say January 1, 1946, should be selected, but in my opinion the selection of such a date would be unfair as between claimants the dates of whose losses might be several years apart. If it is deemed too generous to claimants for personal injuries and death, and too much out of line with the precedents, to allow interest from the dates recommended above I could only recommend as an alternative the elimination of interest for an arbitrarily selected number of years, say five, in each case. As an example, this would mean that a claimant who suffered personal injuries in 1939 would receive compensation determined on the principles set out above but would receive interest thereon only from 1944, while a claimant who received personal injuries in 1945 would receive compensation determined on the principles set out above with interest from 1950. There would be one advantage in using the alternative rule suggested: if five years' interest is deducted from the amount computed as set out above I think that all the interest in each case could run from the same date as most of the hospital and medical expenses and other expenditures analogous to special damages would have been made within the five year period.

On balance I am inclined to think that the recommendations I have made with reference to interest on personal injury and death claims should stand, but the balance is an even one between this and the alternative recommendation that I have suggested, and it may very well be that having in mind the general rule applicable in the civil courts and the course which was followed after World War I the Government will wish to adopt my alternative recommendation.

Limitation of Time for Filing Claims

I recommend that upon the establishment of tribunals for adjudicating war claims every reasonable effort should be made to give adequate publicity to the existence of these tribunals and to the nature of their functions. At the time this publicity is given notice should be given by advertisement that if any person wishing to claim has not already given notice to a department of the Government of his claim he must do so within a specified period from the date of the advertised notice and that if he does not do so within that period his claim will not be entertained. In my view a period of six months would be adequate. At the end of that period the hearings and adjudications by the tribunals could begin. It may even be found possible for the tribunals to hear many of the claims before the expiration of the six months' period if they feel that doing so will not entail unnecessary travel to adjudicate claims which will be presented later.

War Claims Tribunals

Establishment

Before putting forward my recommendations under this heading I should like to make certain general recommendations based upon the experience of tribunals established in Canada after World War I to deal with war claims. These tribunals had the judicial function of determining whether claims put forward by claimants fell within the category of claims for which compensation should be paid. Their duty was to determine the eligibility of claims under treaty provisions. These provisions were of a somewhat wide and indefinite nature and left much discretion to the tribunals.

After World War I four successive Commissions were established to deal with claims. The last claims were not finally disposed of until 1933. Each tribunal consisted of one Commissioner and the available records indicate that these Commissioners discharged their duties with great ability, fairness and consistency.

However, in my opinion, if so long a delay now takes place in dealing with the claims arising out of World War II it will to a great extent defeat the purpose of payment of the compensation. In many cases individuals will have died. In other cases while the compensation if promptly paid might assist the individual to meet the loss sustained it will, if payment is deferred too long, come merely as an unexpected wind-fall after the claimant has been compelled to overcome his loss in some other way. Then too, if compensation is to be paid to persons dependent upon another upon whose death the war claim arises, unless compensation is paid promptly it may be of little use to the dependents.

I consider that it is of prime importance that war claims, particularly those of individuals, be dealt with as expeditiously as possible and that payment be made at as early a date as possible. One cause of delay in the past was the vagueness of the terms of reference to the tribunals which made it necessary in the interests of fairness and consistency for every claim to be dealt with as far as possible by the same tribunal. I therefore recommend that before the setting up of a tribunal or tribunals there should be established a code defining the war claims that are admissible and settling the basis upon which the compensation is to be determined. I recommend that then several tribunals be established at convenient points throughout Canada to deal with claims. Each tribunal should consist of a Deputy Commissioner who should have the assistance of a registrar or secretary. There should be a Chief Commissioner with a sufficient staff to enable him to discharge his duties to be outlined. The function of each Deputy Commissioner with reference to each claim coming before him would be to find the facts and to recommend whether any and, if so, what amount should be paid in respect of the claim out of the Fund, having regard to satisfaction otherwise provided for, but subject to the application of such priority provisions as may be applicable. The Deputy Commissioner would report his findings and recommendation, with his reasons therefor, to the Chief Commissioner, who would review and either approve, with or without variations, or reverse the Deputy Commissioner's findings and recommendation. If the Chief Commissioner approves without variation the Deputy Commissioner's findings and recommendation he should, if it is a case where the priority provisions are applicable, apply those provisions and make his recommendation in respect of the claim to the Government. If the Chief Commissioner is of opinion that he should not approve without variation the Deputy Commissioner's findings and recommendation, he should, before making his final decision with respect to them, refer the report back to the Deputy Commissioner for further consideration and report and, after receiving the

further report from the Deputy Commissioner, make his recommendation on the claim to the Government after applying the priority provisions, if applicable; but before he makes his recommendation to the Government he should, if his proposed recommendation departs from the Deputy Commissioner's recommendation adversely to the claimant, communicate with the claimant stating briefly what his proposed recommendation to the Government will be and his reasons for departing from the Deputy Commissioner's recommendation and inviting expression of the claimant's views in writing, such communication to be made long enough before the Chief Commissioner's recommendation to the Government to enable the claimant to make written representations to the Chief Commissioner.

The Chief Commissioner should convene a meeting or meetings of the Deputy Commissioners for the consideration of problems arising or likely to arise generally. The appointment of a number of Deputy Commissioners would greatly expedite disposition of the claims, and establishment of a relatively detailed code would leave little more to the discretion of any Commissioner than a Judge would ordinarily exercise in the discharge of his duties.

Procedure

With respect to the procedure to be followed by the tribunals I recommend that the following steps be taken:

- (1) The Chief Commissioner or the War Claims Branch of the Department of the Secretary of State should furnish to each Deputy Commissioner a list of the claims of persons to be dealt with by the Deputy Commissioner together with the material that the claimants have submitted.
- (2) The registrar or secretary of the Deputy Commissioner should give notice to each claimant of the Deputy Commissioner's intention to hear his claim at a fixed time and place and should permit the claimant to come forward, make representations and submit evidence.
- (3) It should not be necessary for the claimant, but he should be free, to be represented by counsel in order to have his claim considered.
- (4) Upon a claim being approved by the Chief Commissioner he should, as indicated above, make a recommendation to the Government of the payment to be made. Such recommendation would, of course, not confer on the claimant a legal or enforceable right to the payment recommended, but would normally, I have no doubt, be accepted and acted upon by the Government.

In my opinion, the foregoing procedure would permit a thorough investigation of each claim without imposing unnecessary formality of presentation and consideration of the claims. At first glance it would appear that the procedure is unusual in that only the claimant would be represented in the proceedings, no person appearing to oppose the claim. I do not think that the Deputy Commissioners should be authorized to engage the services of counsel or that they should be furnished with counsel except from Government departments. The Commissioners appointed after the last war dealt with the large number of claims before them without the assistance of counsel and in an eminently satisfactory manner. Moreover, as I shall point out below in dealing with the rules of evidence to be followed, the nature of the issues in these claims will be such that they cannot be thrashed out in the manner in which issues are explored in ordinary lawsuits. Each Commissioner will, of necessity, have to act on general knowledge and will have to accept evidence that will not ordinarily be accepted in courts of law. To make the procedure too rigid or formal would almost inevitably involve either large expense on the part of the claimant in proving his claim to the last formal detail, or complete rejection of the claim.

Evidence

I make the following recommendations with respect to evidence:

- (1) Subject to the qualifications I mention below the burden of establishing the validity of a war claim and the proper amount to be paid should rest upon the claimant.
- (2) The ordinary rules of evidence should not apply and any testimony or documents should, at the Commissioner's discretion, be admissible as evidence, the question of the weight to be given to the evidence as proof being one for the Commissioner (Deputy Commissioner or Chief Commissioner as the case may be).
- (3) The Chief Commissioner before hearings by the Deputy Commissioners commence should make such rules regarding the admissibility of evidence and the necessity of corroboration as he thinks desirable to enable him and the Deputy Commissioners to carry out their duties. In many cases it may be undesirable to base recommendations on uncorroborated evidence of claimants. Instances which come to mind are evidence of the amount of currency lost, the value of jewellery, works of art, and so forth, and many other instances can be envisaged.
- (4) In order to aid both the claimants and the Deputy Commissioners in obtaining evidence as to claims and the corroboration of evidence, the Chief Commissioner should have a staff of well-qualified persons whose duty it would be to go through the file of each claim before it is sent to a Deputy Commissioner and to place on the file a memorandum as to corroboration and general information that the Deputy Commissioner might need. For example, where a person claims compensation for maltreatment in internment, the fact and duration of his internment could be confirmed before the file is sent to the Deputy Commissioner. Again, if a claim is made for compensation for the loss of a house alleged to have been damaged or destroyed it might be possible for the Chief Commissioner's staff through the appropriate department of Government to make inquiries as to whether the house was in fact damaged or destroyed and possibly as to the extent of the damage. Or, in claims for losses of personal property alleged to be on board a ship sunk by enemy action, possibly the quantity of luggage could be ascertained. It would seem that in this way a great deal of useful evidence, corroborative or otherwise, could be procured. In the case of claims for property losses the Chief Commissioner should be free to require the Deputy Commissioner to take special measures to ascertain the relevant facts, such as, for example, the making of arrangements for taking evidence abroad.

The Chief Commissioner should attempt as far as possible to provide through his staff such facilities as are practicable to enable claimants to obtain evidence inexpensively and expeditiously.

Each Commissioner should have all the powers of Commissioners appointed under the Inquiries Act, so that evidence may be obtained at the instance of a Commissioner, whether the production of such evidence is desired by the claimant or not.

The reasons for the foregoing recommendations under the heading of "Evidence" are, I think, obvious.

General

The Chief Commissioner should be empowered and should feel free to recommend amendments to the code from time to time in the light of the experience gained by himself and the Deputy Commissioners, if the making of the amendments will do no injustice to and work no discrimination against the claimants whose claims shall have then been disposed of.

While the word adjudication is freely used in this report as describing hearings and decisions by Commissioners, it is apparent from the nature of their duties as just outlined that their functions will be administrative or advisory rather than judicial in any strict sense of the term.

Order in Which Claims Should be Dealt With and Paid

It will be apparent from the list of recommended priorities that all the death and personal injury claims can be paid shortly after they are all reported on and considered by the Government, and that each claim may be paid as soon as reported on and considered by the Government if the total claimed, before the time limit, for death and personal injuries claims does not exceed the amount in the Fund. As the total of death and personal injury claims is almost certain to be far less than the amount of the Fund, I would expect it to be possible for each death and personal injury claim to be paid very shortly after adjudication of that claim. A similar observation applies to the maltreatment claims. It applies also to the property claims up to the limits recommended in some of the higher priorities. There would, therefore, appear to be no good reason to adjudicate the claims of any particular class before those of any other class. The larger property claims may not finally be settled for years because there may be additions to the Fund by transfers from the Custodian and by receipts from IARA, but this possibility will not prevent the expeditious satisfaction of claims in the higher priorities.

Disposition of Surplus

If, after satisfaction of all admissible claims in accordance with the foregoing recommendations, there is money still in the Fund, this surplus should be paid into the Consolidated Revenue Fund. There is nothing inappropriate about using reparations to compensate Canadians generally *pro tanto* for the huge costs of the war. Their claim should be regarded as one having the lowest priority but still having a possible place in the scheme of distribution. As it is not improbable that the death, personal injury and maltreatment claims will use up \$4 or \$5 million of the Fund, and as the property claims, exaggerated as many of them are, by the standards of the foregoing recommendations, amount to approximately \$50,000,000 and the total amount in the Fund that can be counted on with any approach to certainty is less than \$10,000,000, it is improbable that there will be a surplus.

Discretionary Powers

The recommendations in this report are perhaps too detailed. They are made so for the purpose of helping the Government and the Commissioners to thread their way through a labyrinth. Possibly more than envisaged above should be left to the discretion of Commissioners, even though more discrimination than that which is obviously inevitable would result. After World War I

the Canadian Commissioners in some cases leaned heavily on the first sentence of Para. 11 of Annex II of Part VIII of the Treaty of Versailles, which is as follows:

“The Commission shall not be bound by any particular code or rules of law or by any particular rule of evidence or of procedure, but shall be guided by justice, equity and good faith.”

In the establishment of a code of rules as recommended above, while no wide-open discretion should be conferred, as this might lead to unnecessary discrimination, there may be certain matters as to which the rules themselves should provide in a limited way for the exercise of individual discretion. It is impossible to specify these matters with any confidence that the list will be complete in advance of hearings, but after a number of typical claims in each class are heard and before decisions thereon are rendered, the Chief Commissioner should feel free to recommend the inclusion in the rules of provisions conferring discretionary powers.

Legislation and Orders in Council

I am making no recommendations as to what legislative or executive acts may be necessary to carry out the recommendations in this report, this being primarily a matter for the law officers of the Crown.

Acknowledgment and Conclusion

I should like to acknowledge with deep appreciation the invaluable assistance in this inquiry and the preparation of the report which I have received from members of the civil service in several departments of Government including the Departments of the Secretary of State, Justice, Finance, External Affairs, National Defence, Veterans' Affairs and Citizenship and Immigration, particularly from the Director and staff of the War Claims Branch of the Department of the Secretary of State.

Schedule A

Approximate value in terms of Canadian dollars of the following currencies
as at December 30, 1949

<i>Country</i>	<i>Unit</i>	<i>Rate</i>	<i>Source of quotation and remarks</i>
Austria	schilling	.0514976	International Financial Statistics See footnote (a)
Belgium	franc	.0220	International Monetary Fund parity See footnote (b)
Bulgaria	lev	.00381944	International Financial Statistics (Dec. 15)
Channel Islands	pound	3.0725	Sterling area
Czechoslovakia	koruna	.0220	International Monetary Fund parity
Danzig	gulden	.1835518	See footnote (c)
Estonia	kroon	.2594338	See footnote (d) (1 kr.=1.25 roubles)
Finland	markka	.0047619	International Financial Statistics
France	franc	.0031488	International Financial Statistics
Germany	deutschemark	.2622169	Federal Reserve Bank See footnote (e)
Greece	drachma	.000073238	International Financial Statistics
Hungary	forint	.092983	International Financial Statistics See footnote (f)
Italy	lira	.0017633	International Financial Statistics
Lithuania	lita	.1867924	See footnote (g) (1 lita=.90 roubles)
Luxembourg	franc	.0220	International Monetary Fund parity
Monaco	franc	.0031488	See French franc
Netherlands	florin	.289474	International Monetary Fund parity See footnote (h)
Norway	krone	.1540	International Monetary Fund parity
Poland	zloty	.0027363	International Financial Statistics
Roumania	leu	.0071896	International Financial Statistics
United Kingdom	pound	3.0725	Sterling area
U.S.S.R.	rouble	.207547	Nominal. 5.30 roubles=\$1 U.S.
Yugoslavia	dinar	.0220	International Monetary Fund parity

British North Borneo	Malayan dollar	.358458	Sterling area. 2/4
Brunei	Malayan dollar	.358458	Sterling area. 2/4
Burma	rupee	.2304379	Par with India
China	Shanghai dollar (yuan)	.000052381	Federal Reserve Bank (21,000 Sh=\$1.00 U.S.)
Hongkong	Hongkong dollar	.19203	Sterling area. 1/3
Indo-China	piastre	.05358	International Financial Statistics (Jan. 10)
Indonesia	florin	.289093	International Financial Statistics (Dec. 15)
Japan	yen	.0030555	International Financial Statistics (Dec. 15)
Malaya	Malayan dollar	.358458	Sterling area. 2/4
Philippines	peso	.55	International Monetary Fund parity
Thailand	baht	.047109	International Financial Statistics (Dec. 15)

In converting into Canadian terms parity rates quoted by the International Monetary Fund and those obtained from International Financial Statistics and the Federal Reserve Bank the Foreign Exchange Control Board official buying rate of 1.10 has been used.

In the case of sterling area territories the official sterling equivalent has been used converted into Canadian terms at the Foreign Exchange Control Board official buying rate of 3.0725.

(a) In March, 1938, when Austria was incorporated into the German Reich the schilling currency was replaced by the reichsmark. The schilling was reintroduced as the national currency in November, 1945.

(b) In the fall of 1944 bank balances in Belgium except for 10 per cent or the balances at May 9, 1940, whichever was the greater, were blocked and, apart from further nominal releases, were subject to individual investigation and justification of the source of the increase over May 9, 1940. Depending upon the circumstances in each case a progressive tax ranging up to 100 per cent was imposed upon such blocked balances.

(c) As from September 30, 1939, the gulden became no longer legal tender in Danzig being replaced by the reichsmark. During the month prior to September 30, 1939, the gulden was exchangeable for reichsmarks on the basis of 1 gulden = .70 reichsmark.

The quotation appearing above—for what it is worth—represents the equivalent of .70 deutsche mark without taking into consideration the reorganization of the German currency which resulted in the introduction of the deutsche mark. (See footnote (e)).

(d) The existence of an independent currency for Estonia came to an end with the incorporation of that state into the U.S.S.R. in 1940, the circulating medium from November 25, 1940, being the rouble. At that time conversion of kroons into roubles was made on the basis of 1 kroon = 1.25 roubles. The quotation for the kroon is given above on this basis.

(e) With the introduction of the deutsche mark about the end of June, 1948, credit balances were converted into deutsche marks at the rate of one deutsche mark for every ten old marks. After conversion only one-half of the proceeds were credited to free deutsche mark accounts, the remainder being placed in blocked deutsche mark accounts. In October, 1948, it was enacted that of every ten marks held in blocked deutsche mark accounts seven were to be cancelled, two transferred to free deutsche mark account, and one made available for investment in securities. Accordingly, every 1,000 marks originally held ultimately produced only 65 deutsche marks.

(f) Following occupation by the Russian army in 1945, the pengo passed through a period of hyperinflation which ended on August 1, 1946, when it was replaced by the forint, the rate of conversion being 400 octillion pengoes (400 followed by twenty-seven zeros) to one forint. The official exchange rate was fixed at 11 7393 forints to one dollar. Since then, one kilogram of fine gold equals 13,210 forints, which corresponds to 1 forint equal to 0.0757 gram of fine gold. In May, 1946, during the last stage of the inflation that destroyed the pengo, an auxiliary currency, the so-called tax-pengo was brought into circulation; this currency was converted at the rate of one forint to 200 million tax-pengoes.

(g) The existence of an independent currency for Lithuania came to an end with the incorporation of that state into the U.S.S.R. in 1940, the circulating medium from November 25, 1940, being the rouble. At that time conversion of litas into roubles was made on the basis of 1 lita = .90 rouble. The quotation for the lita is given above on this basis.

(h) Measures for the "rehabilitation" of the currency instituted by the Netherlands authorities in 1945 involved the blocking of guilder accounts on September 26 of that year. Releases from blocked account were permitted from time to time for specified purposes but the bulk of the funds could be employed only in Government bonds and taxes were levied on increments during the war years.

Schedule B

Approximate value in terms of Canadian dollars of the following currencies
as at June 30, 1939

<i>Country</i>	<i>Unit</i>	<i>Rate</i>	<i>Source of quotation and remarks</i>
Austria	schilling	.268225	See footnote (a)
Belgium	franc	.0341	FRB certified rate for belga: 5 francs=1 belga
Bulgaria	lev	.01215	FRB certified rate
Channel Islands	pound	4.69577	FRB certified rate
Czechoslovakia	koruna	.034404	London "Economist"
Danzig	gulden	.1888	London "Economist"
Estonia	kroon	.2575	London "Economist"
Finland	markka	.0206	FRB certified rate
France	franc	.026568	FRB certified rate
Germany	reichsmark	.402343	FRB certified rate
Greece	drachma	.008592	FRB certified rate
Hungary	pengo	.1962	FRB certified rate
Italy	lira	.05278	FRB certified rate
Lithuania	lita	.16779	London "Economist"
Luxemburg	franc	.042625	see footnote (b)
Monaco	franc	.026568	see French franc
Netherlands	florin	.5325	FRB certified rate
Norway	krone	.2359	FRB certified rate
Poland	zloty	.188675	FRB certified rate
Roumania	leu	.007058	FRB certified rate
United Kingdom	pound	4.69577	FRB certified rate
U.S.S.R.	rouble	.18928	London "Economist"
Yugoslavia	dinar	.02275	FRB certified rate

In converting Federal Reserve Bank certified rates into Canadian terms the rate of 1.00²/₄ has been used.

Quotations from the London "Economist" are the mean of the range of business as reported, converted at 4.69³/₈.

(a) In March, 1938, when Austria was incorporated into the German Reich, schillings were exchanged for reichsmarks at the rate of 1.50 schillings per reichsmark. The quotation given above is based on the German reichsmark in this ratio.

(b) Following a special decree of the Grand Duchy dated April 1, 1935, the Luxembourg franc was at this period equal to 1.25 Belgian francs. The quotation is based on the Belgian franc in this ratio.

Schedule C

Approximate value in terms of Canadian dollars of the following currencies
as at June 30, 1941

<i>Country</i>	<i>Unit</i>	<i>Rate</i>	<i>Source of quotation and remarks</i>
British North Borneo	Straits dollar	.5168	Sterling area. 2/4 per Straits dollar
Brunei	Straits dollar	.5168	Sterling area. 2/4 per Straits dollar
Burma	rupee	.33225	Sterling area. 1/6 per rupee
China	Shanghai dollar	.0587125	FRB certified rate
Hongkong	Hongkong dollar	.276875	Sterling area. 1/3 per Hongkong dollar
Indo-China	piastre	.2515	Samuel Montagu & Co., London, "Review of Foreign Exchanges"
Indonesia (Netherlands East Indies)	florin	.5829	Samuel Montagu & Co., London, "Review of Foreign Exchanges"
Japan	yen	.257825	FRB certified rate
Malaya	Straits dollar	.5168	Sterling area. 2/4 per Straits dollar
Philippine Islands	peso	.546575	Samuel Montagu & Co., London, "Review of Foreign Exchanges"
Thailand	baht	.4061	Samuel Montagu & Co., London, "Review of Foreign Exchanges"

In converting Federal Reserve Bank certified rates to Canadian currency the Foreign Exchange Control Board official buying rate of 1·10 has been used.

In the case of sterling area territories the official sterling equivalent has been used converted into Canadian terms at the Foreign Exchange Control Board official buying rate of 4·43.

Quotations from Samuel Montagu & Co.'s "Review of Foreign Exchanges" are the mean of the range of business as reported, converted at the Foreign Exchange Control Board official buying rate of 4·43.

Order in Council

P.C. 667 of February 4, 1952

WHEREAS by Order in Council P.C. 3951 of 31st July 1951 the Right Honourable James Lorimer Ilsley, P.C., K.C., Chief Justice of Nova Scotia, was appointed a Commissioner to inquire into and report upon claims arising out of World War II that have been asserted by Canadians in respect of death, personal injury, maltreatment and loss of or damage to property;

AND WHEREAS requests have been made with respect to losses resulting from deaths or injuries for payment of interim compensation pending the completion of the investigation of all such claims;

AND WHEREAS the Commissioner was requested to submit an interim report on the practicability of making payments of interim compensation and by his interim report dated November 2, 1951, the Commissioner has recommended payment of interim compensation in certain cases.

THEREFORE, His Excellency the Administrator in Council, on the recommendation of the Secretary of State, is pleased to authorize and doth hereby authorize the Minister of Finance to make payment by way of advance on account of compensation that may finally be awarded with respect to war claims that the Treasury Board is satisfied are eligible for payment in accordance with the rules set out in the Schedule hereto, to be known as the "War Claims Interim Compensation Rules", the payments to be made out of moneys appropriated by Parliament to provide for miscellaneous, minor and unforeseen expenses or out of moneys provided by Parliament for the payment of war claims.

N. A. ROBERTSON,
Clerk of the Privy Council.

SCHEDULE

1. These rules may be cited as the "War Claims Interim Compensation Rules".

Interpretation

2. In these rules,

(a) "act complained of" means the act of the belligerent armed forces or the maltreatment causing the death or injury in respect of which a claim is made;

(b) "Canadian domicile" means Canadian domicile within the meaning of the Immigration Act;

(c) "child" includes step-child, adopted child, grandchild and a person to whom the deceased or the claimant stood in *loco parentis*;

(d) "civilian" means a person who at the time of the death or act complained of, as the case may be, was not a member of any armed forces, police forces, organized group or other class to or in respect of all or some members of which benefits have been provided by way of pension, gratuity, or other compensation for injury or death arising out of service in World War II under

The Pension Act

The Women's Royal Naval Services and the South African Military Nursing Service (Benefits) Act

The Civilian War Pensions and Allowances Act

The Special Operators War Service Benefits Act

The Supervisors War Service Benefits Act

or any similar statute or regulation of Canada or Newfoundland or of any other country and notwithstanding that such pension, gratuity or compensation may not be payable to or in respect of that person, although he is a member of the class;

(e) "domicile" means "domicile" in accordance with the principles of the Common Law;

(f) "enemy government" means the government of any of the German Reich, Hungary, Italy, Japan and Roumania;

(g) "operations of war" means

(i) acts of actual warfare by belligerent armed forces, enemy, allied or Canadian, outside of Canada and Newfoundland, and

(ii) maltreatment in internment or detention by the civilian or military authorities of an enemy government;

(h) "parent" includes father, mother, grandfather, grandmother, step-father, step-mother, a person who adopted a child and a person who stood *in loco parentis* to the deceased or to the claimant;

(i) "World War II" means

(i) in the case of the war against the German Reich, Hungary, Italy and Roumania, the period from September 1, 1939 until May 8, 1945; and

(ii) in the case of the war against Japan, the period from December 7, 1941, until September 2, 1945.

Canadian

3. (1) For the purposes of these rules "Canadian" means:—

(a) with respect to any time on and after the first day of January, 1947, a Canadian citizen within the meaning of the Canadian Citizenship Act, and

(b) with respect to any relevant time before the first day of January, 1947, means a person

(i) who was born in Canada and had not become an alien at the relevant time;

(ii) who was born outside of Canada and his father, or in the case of a person born out of wedlock, his mother,

(A) was born in Canada and had not become an alien at the time of that person's birth, or

(B) was, at the time of that person's birth, a British subject who had Canadian domicile

if at the relevant time that person had not become an alien and had either been lawfully admitted to Canada for permanent residence or was a minor;

- (iii) who was granted or whose name was included in a certificate of naturalization granted in Canada and that person had not become an alien at the relevant time;
- (iv) who at the relevant time was a British subject who had Canadian domicile;
- (v) who being a woman other than a woman who comes within paragraph (iii) or (iv)
 - (A) before the relevant time was married to a man who at the time of the marriage possessed the qualifications set out in paragraphs (i), (ii), (iii) or (iv); and
 - (B) at the relevant time was a British subject and had been lawfully admitted to Canada for permanent residence; or
- (vi) who at the relevant time was a British subject having a domicile in Canada.

(2) For the purposes of these rules, Newfoundland shall be deemed at all times to have been part of Canada.

(3) Where any question arises under these rules as to whether a person had Canadian domicile or was or is a Canadian citizen within the meaning of the Canadian Citizenship Act at any time, or had domicile in Canada or was a British subject at any time, the Custodian appointed by the Revised Regulations respecting Trading with the Enemy (1943) or the Treasury Board may refer the question to the Deputy Minister of Citizenship and Immigration, the Under-Secretary of State for External Affairs or the Deputy Head of any other Department having information with respect thereto for his opinion and advice and may request to be furnished with such information as may be available to him or the Deputy Minister, Under-Secretary or other Deputy Head shall furnish such opinion, advice or information.

Interim Compensation

4. Payment may be made of an amount not exceeding one-half of the amount that the Treasury Board is satisfied is the amount of the loss sustained by a claimant, or \$2,000, whichever is less, if the Treasury Board is satisfied

(a) that the claimant is undergoing serious financial hardship at the time he makes his claim for payment, and

(b) that the loss resulted from injury to the claimant or to his wife or child, or from the death of another person, caused by operations of war during World War II and the requirements of these rules are complied with.

5. Where a claim is for loss resulting from the death of a person payment may be made if the following requirements are met:

(a) the claimant was a Canadian at the time of the act complained of, at the time of the death and at the time the claim is allowed;

(b) the claimant was the spouse, parent or child of the deceased;

(c) the deceased was a civilian at the time of the act complained of and at the time of the death;

(d) the amount of the claim does not exceed the pecuniary loss suffered by the claimant as a result of the death of the deceased.

6. Where a claim is for loss resulting from personal injuries, payment may be made if the following requirements are met:—

- (a) the injury was sustained by the claimant or his wife or child;
- (b) the claimant was a Canadian at the time of the act complained of and at the time the claim is allowed;
- (c) the person injured was a civilian at the time of the act complained of;
- (d) the amount payable does not exceed the pecuniary loss to the claimant resulting from the injury, and in computing the pecuniary loss permanent impairment of earning capacity shall be included as a ground of loss, but earning capacity is not deemed to have been impaired during any period of internment or detention.

7. In computing the pecuniary loss under Section 5(d) or Section 6(d), no amount shall be allowed with respect to pain and suffering, loss of enjoyment of life, loss of consortium, or loss or diminution of expectation of life.

8. No interim compensation is payable if, in the opinion of the Treasury Board, the claimant is likely to receive or has received fair and reasonable compensation from another source in respect of the death or injury for which the claim is made.

9. It shall be a condition to the payment of interim compensation that the claimant undertake and agree to repay to His Majesty the amount paid by way of interim compensation if it is subsequently determined that the claimant is not eligible to receive any compensation, or such part of the amount paid as is in excess of the amount that it is subsequently determined that the claimant is eligible to receive, for the loss in respect of which the claim was made.

10. Where the claim has been made by or on behalf of an infant or other person under any legal incapacity, payment may be made to such person and on such conditions as the Treasury Board may determine.

Procedure

11. A claim for interim compensation under these rules shall be made to the Custodian appointed by the Revised Regulations respecting Trading with the Enemy (1943) in such form and manner as the Treasury Board may prescribe.

Order in Council

P.C. 4267 of October 9, 1952

WHEREAS pursuant to Order in Council P.C. 3951 of 31st July, 1951, the Right Honourable James Lorimer Ilsey, Chief Justice of Nova Scotia, was appointed a Commissioner under Part I of the Inquiries Act to inquire into and report upon War Claims arising out of World War II made by Canadians in respect of death, personal injury, maltreatment, and loss of or damage to property;

AND WHEREAS a report dated February 25, 1952, entitled "Report of the Advisory Commission on War Claims" has been made by the said Commissioner containing certain recommendations pertaining to the classification of War Claims, the priorities to be established for the payment of claims, the maximum compensation to be prescribed in relation to any class of claims or claimants, the method to be adopted for determining losses and for the payment of compensation, and other related matters;

AND WHEREAS it is necessary that regulations be made to govern the payment of compensation from the War Claims Fund to such claimants as may be found to have valid claims.

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Right Honourable Louis S. St-Laurent, the Prime Minister, and pursuant to Vote 696 of The Appropriation Act, No. 4, 1952, is pleased to make the annexed War Claims Regulations, and they are hereby made and established, accordingly.

J. W. PICKERSGILL,
Clerk of the Privy Council.

WAR CLAIMS REGULATIONS

1. These regulations may be cited as the War Claims Regulations.

2. In these regulations,

(a) "war claims" means a claim for compensation arising out of World War II;

(b) "War Claims Commissioner" means a commissioner to be appointed after the coming into force of these regulations for the purpose of inquiring into, reporting upon and making recommendations with respect to the payment of war claims in particular cases;

(c) "War Claims Fund" means the War Claims Fund established by Vote 696 of The Appropriation Act, No. 4, 1952; and

(d) "war claims rules" and "rules" means the rules established by section three.

3. The recommendations contained in the Report of the Advisory Commission on War Claims dated February 25, 1952, modified to the extent specified in the Schedule hereto, shall constitute the rules governing payment out of the War Claims Fund of compensation in respect of war claims.

4. (1) Payment may be made out of the War Claims Fund, with the approval of the Treasury Board, to a person, or to another on his behalf, in respect of a war claim, of an amount that, in the opinion of the War Claims Commissioner, that person is eligible to receive under the war claims rules.

(2) Notwithstanding subsection one, payment may be made out of the War Claims Fund of compensation for maltreatment at the *per diem* rates specified in the rules to a person, or to another on his behalf, where, in the opinion of the Treasury Board, that person is eligible to receive such compensation under the rules.

(3) In approving payments under this section, the Treasury Board shall determine the times at which such payments shall be made to give effect to the order of priorities established by the war claims rules.

5. No right to payment is conferred by these regulations.

6. These regulations shall be administered by the Secretary of State.

Schedule

1. *Claims by Canadians*

(a) Where a claim is made for maltreatment and the person who suffered the maltreatment was at the time when the maltreatment occurred a member of the armed forces of Canada, the claimant shall be deemed to have been a Canadian both at the time of the maltreatment and at the time of presentation of the claim.

(b) For the purpose of determining whether a corporation is a Canadian at any relevant time, of the three tests recommended by the Advisory Commission on War Claims, only those as to residence and trading are retained and the test relating to ownership of outstanding securities is deleted.

(c) A corporation regarded as having had residence both in Canada and outside of Canada at any relevant time may be treated as at that time having had Canadian residence only if it then was incorporated in Canada.

2. *Maltreatment*

(a) *In respect of the European Theatre:*

Where a person has been in the direct custody of members of an organization declared a criminal organization by the International Military Tribunal, Nuremberg, (such organizations being the SS, SD, Gestapo and Leadership Corps), and is ineligible for an award under the Sumner Commission test, he may, if held in such custody for a period of fourteen days or more, be awarded one dollar *per diem* for each day of such custody, but should such custody have been for less than fourteen days any award on a *per diem* basis shall be within the discretion of the War Claims Commission. The receipt of or the eligibility for a pension under the Pension Act for disability consequent upon maltreatment shall not be taken into account in determining eligibility for or the amount of a *per diem* award or a lump sum award for maltreatment.

(b) *In respect of the Far Eastern Theatre:*

Maltreatment awards at the rate of one dollar *per diem* to or in respect of former prisoners of war of the Japanese eligible therefor under the Report of the Advisory Commission on War Claims may be paid in a lump sum as in the case of such awards to or in respect of civilians, and such payments shall include any benefit for which the recipients may be eligible pursuant to Article 16 of the Treaty of Peace with Japan.

3. *Claims for Property Losses*

(a) In any case in which final compensation for such loss has been provided for by or under an Act of the Parliament of Canada or by the Governor in Council, no claim on the War Claims Fund in respect of such loss shall be admitted.

(b) In the recommendation relating to the payment of certain expenses of claimants, the words "in former enemy or enemy-occupied territory" are substituted for the word "abroad".

4. *Priorities*

(a) Maltreatment is placed on the same priority basis as death and personal injury.

(b) The following additional order of priority is inserted immediately before the concluding order of priority;
all remaining claims for compensation for property losses up to an additional \$50,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

5. *Interest*

Simple interest at three per centum per annum may be paid on the following classes of awards:

- (a) For property losses on the high seas from the date of the loss;
- (b) For personal injury or death on the high seas from the date of the loss;
- (c) For disbursements for medical and similar expenses from the date of the disbursement; and
- (d) For all other claims, excluding awards for maltreatment, from January 1, 1946.

6. *Limitation of Time for Filing Claims*

- (a) Notice of a claim must be received by the War Claims Commission not later than December 31, 1953.
- (b) A claim for maltreatment shall be deemed to be presented at the time when it is first made or on the date of coming into force of the War Claims Regulations, whichever is the later.

Commission

VINCENT MASSEY
(L.S.)

CANADA

ELIZABETH THE SECOND by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas Queen, Defender of the Faith.

To ALL To WHOM these Presents shall come or whom the same may in anywise concern,—GREETING:

W. R. JACKETT,	}	WHEREAS pursuant to the Provisions
ACTING DEPUTY ATTORNEY GENERAL,		of Part I of the Inquiries Act, Chapter
CANADA.		99 of the Revised Statutes of Canada,

1927, Our Governor in Council, by Order P.C. 4354 of the twenty-third day of October, in the year of Our Lord one thousand nine hundred and fifty-two, a copy of which is hereto annexed, has authorized the appointment of Our Commissioner therein and hereinafter named (to be called the Chief War Claims Commissioner and to preside over the War Claims Commission), to inquire into all particular claims made by Canadians arising out of World War II that may be referred to him and for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims, and to report to the Secretary of State stating whether in his opinion the claimant or other person is eligible, under the rules referred to in section three of the War Claims Regulations established by Order in Council, P.C. 4267, of the ninth day of October, one thousand nine hundred and fifty-two, to receive a payment out of the War Claims Fund, together with the reasons for his opinion and his recommendation as to the amount that in his opinion should be paid in respect of each such claim.

AND WHEREAS Our Governor in Council has further directed that Our said Commissioner shall be the Advisory Commissioner on Claims under the Treaty of Peace with Italy to inquire into and make reports and recommendations to the Minister of Finance concerning the matters specified in the War Claims (Italy) Settlement Regulations, pursuant to the provisions thereof.

NOW KNOW YE that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, to be Our Commissioner to conduct such inquiries and to report as aforesaid.

To HAVE, HOLD, EXERCISE AND ENJOY the said office, place and trust unto the said Thane A. Campbell, together with the rights, powers, privileges and emoluments unto the said office, place and trust, of right and by law appertaining, and as are more particularly set out in the said Order in Council, during Our pleasure.

AND we do hereby authorize the Chief War Claims Commissioner to engage the services of

(a) a Secretary and such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants as he deems necessary or advisable, those persons to be seconded from the staffs of the various departments and agencies of the Government of Canada without expense to such departments and agencies, and

(b) such other clerical assistants as he deems necessary or advisable.

AND we do hereby require all departments and agencies of the Government of Canada to furnish such assistance or information as may be required by the Commission.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

Our Right Trusty and Well-beloved Counsellor, Vincent Massey, Member of Our Order of the Companions of Honour, Governor General and Commander-in-Chief of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this Twenty-third day of October in the year of Our Lord one thousand nine hundred and fifty-two and in the First year of Our Reign.

By Command,

C. STEIN,
Under Secretary of State.

Order in Council

P.C. 4354 of October 23, 1952

The Committee of the Privy Council, on the recommendation of the Right Honourable Louis S. St-Laurent, the Prime Minister, advise as follows:

(1) That, under and in pursuance of Part I of the Inquiries Act, a Commission do issue appointing the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, to be a Commissioner (to be called the Chief War Claims Commissioner) to inquire into and report upon claims made by Canadians arising out of World War II for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims;

(2) That the said Commissioner inquire into all particular claims on the War Claims Fund that may be referred to him, and that he report in respect of each such claim to the Secretary of State stating whether in his opinion the claimant or other person is eligible under the rules referred to in section three of the War Claims Regulations established by Order in Council P.C. 4267 of 9th October 1952 to receive a payment out of the War Claims Fund, together with the reasons for his opinion and his recommendation as to the amount that in his opinion should be paid in respect of each such claim;

(3) That the said Commissioner be the Advisory Commissioner on Claims under the Treaty of Peace with Italy to inquire into and make reports and recommendations to the Minister of Finance concerning the matters specified in the War Claims (Italy) Settlement Regulations pursuant to the provisions thereof;

(4) That additional Commissioners be appointed pursuant to the Inquiries Act as may be required to inquire into the report upon such claims, and that the Chief War Claims Commissioner and the said Commissioners be known as the War Claims Commission, over which the Chief War Claims Commissioner shall preside.

(5) That the Chief War Claims Commissioner engage the services of

(a) a Secretary and such accountants, engineers, technical advisers or other experts, clerks, reporters and other assistants as he deems necessary or advisable, those persons to be seconded from the staffs of the various departments and agencies of the Government of Canada without expense to the said departments and agencies, and

(b) such other clerical assistants as he deems necessary or advisable, and that they be paid such remuneration as the Chief War Claims Commissioner, with the approval of the Treasury Board prescribes;

(6) That all departments and agencies of the Government of Canada furnish such assistance or information as may be required by the Commission;

(7) That the Chief War Claims Commissioner be paid his actual travelling and living expenses while absent from his place of residence, for which accounts shall be submitted;

(8) That the expenses incurred under this order be paid out of the War Claims Fund.

J. W. PICKERSGILL,
Clerk of the Privy Council.

Order in Council
P.C. 1953-334 of March 5, 1953

His Excellency the Governor General in Council, on the recommendation of the Right Honourable Louis S. St-Laurent, the Prime Minister, and pursuant to Vote No. 696 of the Appropriation Act, No. 4, 1952, is pleased to amend the War Claims Regulations made and established by Order in Council P.C. 4267 of 9th October, 1952, and the said Regulations are hereby amended by adding to paragraph two of the Schedule thereto the following new subparagraphs (c) and (d):

(c) *Surviving awards—civilian claims:*

Where there is a valid death claim in addition to a claim for maltreatment the accrual of the benefits of the maltreatment award to the widow, dependent husband, child, children, dependent parent or parents of the deceased as the case may be, shall not be taken into account in determining the pecuniary loss which he, she, or they, have suffered from the death.

(d) *Surviving awards—dependents of service personnel:*

Where maltreatment caused death but there is no valid death claim because the deceased was a prisoner of war and pension is payable on account of his death, the maltreatment award payable to the widow, dependent husband, child, children or other dependent shall be paid to such dependent notwithstanding the fact that such dependent is in receipt of a pension in respect of the death, and without any deduction on account of such pension.

J. W. PICKERSGILL,
Clerk of the Privy Council.

Order in Council
P.C. 1953-554 of April 9, 1953

His Excellency the Governor General in Council, on the recommendation of the Secretary of State and pursuant to Vote 696 of The Appropriation Act, No. 4, 1952, is pleased to amend the War Claims Regulations made and established by Order in Council P.C. 4267 of 9th October, 1952, as amended, and the said Regulations are hereby further amended by adding to the Schedule thereto the following new paragraph as paragraph seven thereof:

7. Where the Chief War Claims Commissioner is satisfied that a claimant is entitled to receive a payment of compensation from the Governments of Hungary or Roumania pursuant to the Treaties of Peace with Hungary and with Roumania, and that the amount thereof has not been paid to the claimant, he shall not in applying the Rules regard such entitlement as satisfaction otherwise provided for, provided that the claimant has assigned his rights to such entitlement to the Crown in right of Canada.

J. W. PICKERSGILL,
Clerk of the Privy Council.

APPENDIX "SUPP. E"

Report of the Advisory Commissioner on Claims under the Treaty of Peace with Italy

Pursuant to Section 6 of the *War Claims (Italy) Settlement Regulations*, as reestablished by Order in Council P.C. 1954—1723, and to Section (3) of Order in Council P.C. 4354 of October 23, 1952, I have inquired into all claims under the said Regulations which have been presented or referred to me.

I have already submitted individual reports on all cases in which hearings and reviews were conducted, namely:

Recommendations for payment after hearing and review ..	58
Recommendations for disallowance after hearing and review	15
The remaining claims were rejected by reason of prima facie defects or insufficiency of materials on file; they are listed in the annexed <i>Schedule</i> , and I now recommend that they be disallowed for the reasons there outlined	46
Total number of claims inquired into	119

As a result of my affirmative recommendations in the 58 cases, the following amounts were paid to claimants or to their representatives:

Property losses	Lire 86,369,239.10
Expenses allowed to claimants	2,059,958.00
<hr/>	
making a total of	Lire 88,429,197.10
or the equivalent of	\$ 136,916.25

The amounts so paid were, of course, exclusive of the claims of *Aluminium Limited* and *Estate of Alexander MacKenzie*, which were settled by special arrangement outside the terms of the Regulations.

Dated at Ottawa this 24th day of March, A.D. 1960.

(Sgd.) THANE A. CAMPBELL
Advisory Commissioner.

To The Honourable,
the Minister of Finance,
Ottawa.

Schedule to Appendix "Supp. E"

CLAIMS UNDER ITALIAN TREATY
DISALLOWED*"A"—Lack of Prosecution*

68 CW Bolley, C.
 160 CW De Francesco, Felice Mrs.
 461 CW Ronci, Phillip
 965 BLW Praticco, Renato
 967 CW Starnino, Padina Mrs.
 2124 CW Frank, Nora E. Mrs.
 2770 BEW Baldassari, Davina Mrs.
 2997 BEW Di Raddo, Patsy
 3657 BDW Thalheim, A.
 3749 BDW Lehnecke, George
 5558 BDW Prata, Giuseppe A.
 10307 CW Diodati, Carmine

"B"—Withdrawn or Discontinued

178 CW Donatelli, Pasquale
 191 CW Greenland, W. H.
 529 CW Fallini, Joseph
 2159 BGW Schaffer, Henri
 2366 BKW Hankey, Phyllis A.
 3107 BEW Fera, Frank Estate
 3227 BDW Ferguson, T. Lowe
 9748 BEW Stodart, A. B. (deceased)

"C"—Late Application

10419 CW Micucci, Mariano
 10698 CW Di Ponio, Guiseppe
 10700 CW Boccioletti Brothers
 10717 CW D'Ambrogio, Salutina Mrs.
 10729 BEW Radusinovich, Marko

10762 CW Gattoni, Quintilio
 10838 CW Novak, M.
 10854 CW Masciangelo, Enrico
 10884 CW Porielli, Francesco
 11043 CW Tam, Virginio

*"D"—Lack of Proof of National Status
at Relevant Times*

365 CW Minchella, Antonio
 738 CW Loffredi, Silvio
 955 BEW Bittolo, Cristoforo
 1160 CW Maiorano, Nicola & Maria
 Rosa
 2123 BDW Poggetto, E. A. (deceased)
 2383 BEW Weiser, Julius
 2390 BEW Newman, Oskar C. (de-
 ceased)
 3636 BDW Abravanel, G. de
 4067 BEW Norton, H. J.
 10850 CW Vellone, Giovannina (nee
 Parilio)

*"E"—Lack of Prima Facie Proof of
Validity of Claim*

20 BDW Askonas, Charles
 (deceased)
 248 BEW Halifax Fire Insurance Co.
 1454 BIW Kelly, Douglas & Co.
 2126 CW De Lengerke, John E.
 2153 BDW Sauer, Herman (Dr.)
 9752 BDW Marandola, Arduino

APPENDIX "SUPP. F"

Supplementary Report of the Advisory Commissioner on Claims under the Treaty of Peace with Italy

Since my general Report dated 24th March 1960, two changes are to be noted in the information therein set forth:

(a) By Order in Council P.C. 1960-1019 of 28th July 1960 the *War Claims (Italy) Settlement Regulations* were amended to extend the time for applications by claimants to 30th November 1954. Pursuant to the amendment nine claims which were previously disallowed on account of lateness of application have been revised and paid. This has involved a total additional payment of Lire 2,328,200.32 for property losses and Lire 240,604 for expenses.

(b) It has been possible to make a few slight corrections in the summaries and schedule submitted in my former Report.

As a result of the two above noted factors, the number of claims inquired into may now be summarized as follows:

Recommendations for payment after hearing and review	58
Claims previously rejected but now paid by reason of P.C. 1960-1019	9
Recommendations for disallowance after hearing and review ..	10
Claims recommended for disallowance on account of prima facie defects or insufficiency of materials on file	47
	<hr/>
Total number of claims inquired into	124
	<hr/> <hr/>

The revised totals of amounts paid to claimants or to their representatives are as follows:

Property losses	Lire 88,697,439.41
Expenses allowed to claimants	2,300,562.00
	<hr/>
Making a total of	Lire 90,998,001.42
Or the equivalent of	\$ 140,823.67

A revised *Schedule* listing and classifying the 47 claims recommended for disallowance without individual reports is hereto appended.

Dated this 8th day of December A.D. 1960.

(Sgd.) THANE A. CAMPBELL
Advisory Commissioner.

To the Honourable,
the Minister of Finance,
Ottawa.

Revised Schedule to Appendix "Supp. F"

CLAIMS UNDER ITALIAN TREATY
DISALLOWED*"A"—Lack of Prosecution*

16 CW Antonucci, Guy
 68 CW Bolley, C.
 160 CW De Francesco, Felice Mrs.
 461 CW Ronci, Phillip
 965 BLW Pratico, Renato
 967 CW Starnino, Padina Mrs.
 2124 CW Frank, Nora E. Mrs.
 2770 BEW Baldassari, Davina Mrs.
 2997 BEW Di Raddo, Patsy
 3657 BDW Thalheim, A.
 3749 BDW Papillon, Rev. Antonin
 5558 BDW Prata, Giuseppe A.
 10307 CW Diodati, Carmine

"B"—Withdrawn or Discontinued

178 CW Donatelli, Pasquale
 191 CW Greenland, W. H.
 529 CW Tallini, Joseph
 2159 BGW Schaffer, Henri
 2366 BKW Hankey, Phyllis A.
 3107 BEW Fera, Frank Estate
 3227 BDW Ferguson, T. Lowe
 9748 BEW Stodart, A. B. (deceased)

"C"—Late Application

10419 CW Micucci, Mariano
 10698 CW Di Ponio, Giuseppe
 10700 CW Boccioletti Brothers
 10717 CW D'Ambrogio, Salutina Mrs.
 10729 BEW Radusinovich, Marko

10762 CW Gattoni, Quintilio
 10838 CW Novak, M.
 10854 CW Masciangelo, Enrico
 10884 CW Porielli, Francesco
 11043 CW Tam, Virginio

*"D"—Lack of Proof of National Status
at Relevant Times*

738 CW Loffredi, Silvio
 955 BEW Bittolo, Cristoforo
 1160 CW Maiorano, Nicola & Maria Rosa
 2123 BDW Poggetto, E. A. (deceased)
 2383 BEW Weiser, Julius
 2390 BEW Neuman, Oskar C. (deceased)
 3636 BDW Abravanel, S. de
 4067 BEW Norton, H. J.
 10850 CW Vellone, Giovannina (née Pacilio)
 1996 BEW Dunhill, Herbert

*"E"—Lack of Prima Facie Proof of
Validity of Claim*

20 BDW Askonas, Charles (deceased)
 248 BEW Halifax Fire Insurance Co.
 1454 BIW Kelly, Douglas & Co.
 2126 CW De Lengerke, John E.
 2153 BEW Sauer, Herman (Dr.)
 9752 BDW Marandola, Arduino

APPENDIX "SUPP. G"

Additional Supplementary Report of the Advisory Commissioner on Claims under the Treaty of Peace with Italy

I have recently edited for publication, in connection with the final Report of the War Claims Commission, a number of cases which illustrate the principles and procedure underlying approval or disallowance of claims under the *War Claims (Italy) Settlement Regulations*.

In the course of such editing, I noticed one claim which had been decided adversely to the claimants on 26th March 1958—*Re Teoli*, No. 57 (IT.), and which did not come before me for further review at the time of later decisions on the same question in December 1958 and October 1959. In fairness to the claimants and in order to reconcile the decisions in the three cases, I have now again reviewed the *Teoli* case and recommended a modest award for war damage in Italy. The effect, as may be seen by reference to the edited Report, is to apply the provision of the second sentence of Section 9(b) of Article 78 of the Treaty of Peace with Italy as superseding a principle of Italian domestic law. The other cases concerned are *Re d'Errico*, No. 69 (IT) and *Re Dizazzo*, No. 66 (IT.).

In my inquiry into claims under the Treaty of Peace with Italy, pursuant to references by the Minister of Finance under the authority of The War Claims (Italy) Settlement Regulations, as consolidated by P.C. 1954-1723, (APPENDIX "E" to 1960 Report of War Claims Commission) I relied almost entirely on the use of the facilities of the War Claims Commission, and on the assistance of its Deputy Commissioners and staff with the co-operation of the various Departments of the Canadian Government. One special adviser on Italian background and Italian law was added to the Commission's staff to assist in the processing and hearing of claims under the Treaty with Italy.

I conservatively estimate the additional cost incurred by the Commission by reason of my inquiry into claims under the Italian Treaty at \$45,000.00. Obviously, a similar inquiry by a separate commission would have cost at least twice that amount, but conversely the Italian Treaty inquiry furnished the War Claims Commission with a good deal of information on which to base residual awards to many of the same claimants under the War Claims Rules.

I therefore respectfully recommend that sub-section (4) of section 6 of the War Claims (Italy) Regulations be rescinded and an amending Order-in-Council enacted in its stead to provide that from the 290 million lire paid by Italy to Canada in satisfaction of its general obligations to Canada and Canadians under the Treaty there be paid and transferred to the War Claims Fund the sum of forty-five thousand dollars to reimburse the latter Fund in part for the expenses incurred by the War Claims Commission by reason of the Commissioner's inquiry into claims under the Treaty of Peace with Italy. As the "Commissioner" does not receive any remuneration, the former reference to the determination and payment thereof may be omitted.

As mentioned in my Supplementary Report dated 8th December 1960, nine claims previously rejected were reconsidered and paid by reason of the extension to 30th November 1954 of the last date formaking applications—P.C. 1960-1019 of 28th July 1960. That extension was granted in order to effect a correspondence between the dates prescribed for filing claims under the (Italy) Settlement Regulations and under the War Claims Rules. Ten other applications, which had previously been rejected for lateness, were still not in time to take advantage of the extended date.—*Revised Schedule* Category "C", to my December 1960 Supplementary Report.

Cases have been selected and edited for publication in numerical order, with topical references to be provided by the Index.

Dated this 22nd day of November A.D. 1966.

(Sgd.) THANE A. CAMPBELL
Advisory Commissioner.

To the Honourable,
the Minister of Finance,
Ottawa.

APPENDIX "SUPP. H"

War Claims Fund (W.W. II)—Total Expenditure

Administration Expenses of the War Claims Commission

	<i>Total to September 30, 1966</i>	
Salaries	\$447,767.28	
Professional and Special Services	35,255.18	
Travel	176,197.46	
Freight, Express and Cartage	724.09	
Postage	4,059.09	
Telephones and Telegrams	9,780.77	
Advertising	3,734.85	
Office Stationery, Supplies and Equipment	14,539.17	
Sundries	1,056.10	
	\$693,113.99	
	<i>Number</i>	<i>Amount</i>
Claims Paid		
Maltreatment	9,074	\$ 6,487,398.81
Death	59	504,414.58
Personal Injury	146	236,478.44
Property Loss	1,001	8,772,979.68
	10,280	\$16,001,271.51
TOTAL EXPENDITURE		\$16,694,385.50

Claims approved but not yet paid

Maltreatment (Supplementary)

German P.O.W.	\$ 972.70	
Hong Kong	702.90	
		\$1,675.60

Property Loss

German	Anderson	\$600.00	
	Baier	344.80	
	Macdonald	1,953.00	
	Nielsen	750.00	
		\$3,647.80	
Estimated interest to Sept. 30, 1966		\$2,270.53	
			\$5,918.33
Total			\$7,593.93

APPENDIX "SUPP. J"

WAR CLAIMS COMMISSION

Re Hungarian Peace Treaty

Charlottetown, P.E.I., June 17, 1960.

"As appears by my letter of 19th April, 1955, the suggested reimbursement of the War Claims Fund at 2/3 of the total awards, inclusive of capital and interest, which were being recommended by the Commission under the War Claims Rules was intended to be a minimal estimate for interim reimbursement.

Although reparation awards contemplated by the Hungarian Peace Treaty are limited to 2/3 of the value of the respective properties, that 2/3 is based on replacement value, i.e. the sum necessary to purchase similar property or to make good the loss suffered, and the amount so contemplated is to be fixed at the date of payment.

Our experience with the analogous provision of the Treaty of Peace with Italy under which reparation was based on 2/3 of the October 1952 replacement value, has been that the amount of capital awards (2/3) under the Italian treaty have been slightly in excess of the corresponding capital awards (100%) for the same losses under the War Claims Rules. The reason for this apparent anomaly is, of course, that compensation under the War Claims Rules is limited to the reasonable market value on the lower scale prevailing at 30th June 1939.

In the case of claims under the Hungarian Treaty, since no funds have been provided by the Hungarian Government for payment of such claims, "the date of payment" might fairly be taken as the date of payment of the relative awards under the War Claims Rules. Such payments were, I believe, spread over the years 1955-1959. Replacement costs during those years would, if anything, show an increase over similar costs in 1952. It is therefore, I think, obvious that the capital awards under the Hungarian Treaty would in every case (if the obligation to pay them had been duly honoured), exceed the capital of corresponding awards for the same losses made under the War Claims Rules.

It would therefore appear equitable that the War Claims Fund should be reimbursed from available Hungarian funds to the extent of at least 100% of the capital of the awards paid out of the fund in respect of war losses suffered in Hungary by Canadians. This would involve an addition of perhaps 15 to 20% to the interim reimbursement recommended by my 1955 letter, and would probably be as fair a basis as could be arrived at without embarking on rather speculative computations.

Trusting that these remarks may be of some value, I remain

Yours Faithfully,

(Sgd.) THANE A. CAMPBELL,
Chief War Claims Commissioner".

APPENDIX "SUPP. K"

Report of the Chief War Claims Commissioner on Reference under P.C. 1953-857

By the above cited Order in Council I was directed to "inquire into and report upon conditions in civilian internment and military prison camps in Europe in which Canadians were interned or imprisoned during World War II, with a view to ascertaining whether maltreatment prevailed, sufficiently serious, general and prolonged to justify the payment of an automatic award to Canadians held in such camps, or any of them, for the duration of their internment or imprisonment or of any part of it."

The present War Claims Rules respecting awards for maltreatment of civilians and military personnel elsewhere than in the Japanese-operated camps in the Far East are based on the Report of Advisory Commissioner James Lorimer Ilesley (to which I shall refer as the Ilesley Report), p. 54, as incorporated into the Regulations made by Order in Council P.C. 4267 of 9th October 1952 and amendments. Those Rules, following the test applied by the Sumner Commission as applicable to maltreatment claims by prisoners of war in World War I, provide that an award for maltreatment of a person (military or civilian) held as a prisoner of war or interned in the European theatre of War may be granted only if the claimant proves:

that maltreatment existed in his individual case; and, in addition,

- (a) that incapacity to work was the consequence of such maltreatment; and
- (b) that such incapacity to work subsisted after liberation.

An exception from these requirements is made in the case of a person who has been in the direct custody of an organization declared a criminal organization by the International Military Tribunal, Nuremberg, (such organizations being the SS, SD, Gestapo and Leadership Corps). Such a person, if unable to establish a claim under the Sumner Commission test, may be awarded one dollar per diem for each day of such custody. (See P.C. 1952-4267, Schedule Section 2 (a)).

The chief objections to the present War Claims Rules regarding maltreatment in Europe, as principally advanced by the National Council of Canadian Prisoners of War, are twofold: (a) that such maltreatment was so serious, general and continuous, as to warrant a system of universal automatic awards to all ex-prisoners of war; (b) that insistence on the application of the Sumner Test and on proof of its constituent factors, as well as on proof of specific personal maltreatment by individual claimants constitutes a discriminatory barrier against the claims of many prisoners of war who genuinely suffered serious maltreatment, but who would find it difficult, expensive, and unfairly burdensome at this time to establish (by proof acceptable even to a quasi-judicial tribunal) the circumstances of their individual experiences and the causal connection between their maltreatment and subsisting incapacity to work.

The inquiry directed by the present Reference would appear to be the result of such representations by the National Council to the Government of Canada.

I am fully convinced that the recommendations made in this respect by Advisory Commissioner Ilsley, and adopted by Order in Council P.C. 4267, were sound and equitable in the light of the materials before the Advisory Commissioner for consideration. I shall therefore start from that assumption, and need consider only the bearing of those materials which have more recently become available to me.

Before entering upon this consideration, I must confess that I share the apprehension of those who advocate a universal and automatic *per diem* award, to the effect that, if the Sumner Commission Test were to receive the rigid interpretation accorded it by the late Commissioner Errol M. McDougall in Canadian cases coming before him after World War I, two results would follow: (1) very few maltreatment claims could be validly established by prisoners of war before the present Commission; and (2) the awards in those cases would almost invariably go to claimants who are already in receipt of substantial pensions.

The rigidity of interpretation to which I refer is composed of two requirements which are apparent from Commissioner McDougall's Report: (A) that an award must be based upon, and limited to, actual pecuniary damage; and (B) that the subsisting incapacity must amount to a permanent disability, continuing at the time of the making of the award.

(A) As to "pecuniary damage", the learned Commissioner's attitude to this factor is apparent from numerous passages in his 1930-1931 *Report on Maltreatment*, a few of which I cite:

p. 6 (quoting Parker, J., of the U.S. Mixed Claims Commission):

"a careful consideration fails to disclose that he has suffered any *pecuniary damage* resulting from any maltreatment or other act for which Germany can be held liable under the Treaty".

p. 7: "This Commission's . . . functions must be confined solely to *compensatory damages*."

p. 67: *re Ralph*: "This Commission has no mission to award vindictive damages."

p. 110: *re Walls*: "This Commission has no mission to award punitive damages—its assessment must be *limited to actual damage* resulting from acts of maltreatment."

p. 88: *re Scudamore*: "He has failed to discharge the burden resting on him of establishing a case of *pecuniary damage*."

p. 189: *re Lacey*: "Claimant's percentage of disability is rated at 4% only and I do not think this is of sufficient gravity to justify an award."

In each decision, Commissioner McDougall sets out the basic statement of claim, upon which he obviously founds his award or disallowance:

"He alleges that while a prisoner of war he was subjected to maltreatment which has resulted in pecuniary damage to him."

(B) As to the requirement of permanent or continuing disability, I shall quote first a number of his statements in support of the granting of awards:

p. 26: *re Radenoch*: "As a result of the treatment received by claimant his health has been *seriously* and *permanently* impaired."

p. 36: *re Clubley*: "There seems to be no doubt that claimant's health has suffered *permanent impairment*, which can be traced to the treatment he received as a prisoner."

p. 42: *re Scott*: "Maltreatment which has resulted in a *permanent disability* to him." (Award \$2000.).

p. 49: *re Barton*: "The punishment (for escape) went beyond reasonable bounds and caused him *permanent injury*."

p. 51: *re Hopkins*: "He was subjected to maltreatment resulting in *permanent damage to him*."

p. 63: *re Tuck*: "Claimant suffers some *present disability* from the blow on the head (for refusing to work at what he regarded as munitions labour)."

p. 103: *re Curtis*: "Maltreatment resulted in *irreparable and permanent disability*." (Award \$2000.).

The late Commissioner's universal application of the same criterion is even more definitely established by citations from a few of his very numerous disallowances:

p. 35: *re Hunter*: "I cannot find that claimant was subjected to maltreatment which has caused him *permanent disability*."

p. 28: *re Todd*: "I find that claimant has failed to discharge the burden of showing a *present disability* (1931) resulting from maltreatment."

p. 59: *re Howe*: (The man, after attempting to escape, was kept in solitary confinement, unmercifully beaten, had several teeth knocked out with butts of rifles, was tied to a post and beaten, was kicked in his wounded leg so that the wound was reopened, received no attention for an ear ailment during the flu epidemic, and complained of wanton and deliberate destruction of food parcels by guards when camp rations were entirely inadequate. By 1931 he showed only 5% reduction in earning ability in the general labour market). "Viewing particularly the *slight disability* shown by the claimant... no case for an award for disability resulting from maltreatment as a prisoner of war."

p. 60: *re McGivon*: (A case of particularly brutal treatment). "Claimant has failed to show that his *present* (1931) *disabilities* result from maltreatment whilst a prisoner of war."

p. 62: *re Tyndale*: (The evidence reveals that this man, after having scarlet fever, was ordered to do work which was too heavy for him in his weakened condition and was beaten for not performing it. He was hit on the back and still complains of soreness and stiffness as a result of the treatment. Compelled to work in zero weather without adequate clothing, he complains that he contracted a severe cold, from which he dates his bronchial trouble. He is rated at 100% disability on the general labour market and 35% in his own calling. There is medical evidence that his disability probably resulted from undernourishment and overstrain, particularly having regard to the possible effects of scarlet fever). "He has failed to discharge the burden of establishing that his *present disabilities* are the result of maltreatment."

p. 81: *re Johnson*: (The claimant gave evidence of rough treatment en route; for refusing to work he was kicked; had four teeth knocked out with a rifle butt; collapsed from excessive heat when forced to stand within

3 feet of blast furnace doors; suffered burns while working on furnaces; contracted flu, for which he received no medical attention). Doubt was cast on the claimant's credibility in some respects, but the general reason for disallowance of his claim was that he had "failed to discharge the burden of showing a *present* (1931) *disability* resulting from maltreatment."

p. 88: *re Scudamore*: This is weak case, but the reason stated for disallowance is important: "It is obviously impossible to find that the claimant was subjected to such maltreatment, while a prisoner of war, as has resulted in *permanent disability* to him."

p. 110: *re Walls*: "Claimant appears to be under the misapprehension that the mere fact of imprisonment, with some rough treatment, entitles him to an award... He has failed to show a *present disability* resulting from maltreatment."

p. 217: *re Whyte*: "While there is evidence that his treatment was harsh, I do not consider that this claimant has established the remaining element to entitle him to an award, i.e. *present disability* resulting from maltreatment. His disability (10%, 1931), if any, is slight."

p. 243: *re Wallace*: (The claimant gave evidence of poor food, starvation, physical brutality in a coal mine, that he was struck on the head with a shovel and received no medical attention for the gash, that he was struck in the stomach, back and shoulders with a rifle). His claim was disallowed because "The physical abuse to which he was subjected does not appear to have left any *permanent disability*."

The pattern of decision indicated by the foregoing citations is particularly pointed in No. 2047, *re Dunbar*, p. 167:

(This claimant established maltreatment, and disability which persisted until 20th Sept. 1931, when it was cured by an operation, which he said he could not previously afford). His claim was disallowed because "Intervening loss through inability to work does not, in my opinion, constitute a good ground of recovery."

An analysis of a group of 337 cases decided by Commissioner McDougall, indicates that he disallowed 201 of those claims, very many on the ground that the maltreatment, though often extremely severe, was not shown to have caused a disability subsisting 13 years after liberation. Of the 136 awards made, practically all disclosed, as their principal element of maltreatment, a brutality of treatment connected with enforced labour:

in the salt mines	38
in the coal mines	20
in the metal mines	11
in the iron works	9
in canals, ditches & railways	8
on farms and other heavy work	7
in reprisal and punishment camps	6
in factories	3
in stone quarries	3
in latrines	2
in firing boilers	2

Of the remaining 27 awards, about one-half were related to abuse for refusal to do camp work, while most of the residue involved the lack of proper medical attention.

I have made the numerous citations above in order to emphasize how very few awards would be granted on the present claims if the requirements adopted by Commissioner McDougall were considered applicable, and how closely such awards would be confined to persons already in receipt of substantial pensions. Though the late Commissioner repeatedly said (e.g. p. 11) "It is not a case of supplementing pension awards as some people seem to think", I am confident that such would be the inevitable result of applying his test of "permanent" or "present" resulting disability to the claims before this Commission.

With the greatest respect for the admirable adjudications of Commissioner McDougall, I conceive that highly unsatisfactory results would accrue from the application of his interpretation of the Sumner test to the present claims. The larger and more numerous awards would be made to claimants whose pecuniary damage is already compensated by a comparatively adequate pension scheme, whereas compensation would be denied to the majority of claimants, who would find it difficult to establish a causal relationship between maltreatment, if established, and permanent or present disability, if any.

In view of the presently prevailing, and comparatively adequate, pension scheme, I believe that the only way in which a reasonably fair and equitable method of maltreatment awards can be achieved is by according a more remedial interpretation to the terms of the Sumner Commission test, if it is to be retained, both as to the factor of pecuniary damage, and as to the subsistence of incapacity to work.

In sharp contrast to the McDougall findings, which insist on pecuniary damage as the basis and limit of maltreatment awards, the Ilsley Report says:

p. 51: "Compensation for maltreatment is not to be based on pecuniary loss."

p. 55: "Maltreatment awards are not to be based upon pecuniary loss but are in the nature of solatium to the persons maltreated and highly personal in character."

The soundness of this change in viewpoint is apparent in the comparative adequacy of the present pension scheme to compensate for pecuniary loss occasioned by military service, whether arising from maltreatment or from hardships and injury sustained in action. Further maltreatment awards on the basis of pecuniary loss would serve largely to supplement the pensions of ex-prisoners of war, by comparison with servicemen who have sustained similar pecuniary losses through hardships and injuries in action.

In considering the intention of the phrase "subsisted after liberation", I have unfortunately been unable, in spite of the greatest diligence on the part of my staff and other departmental officers, to secure a complete copy of Lord Sumner's Report, which might indicate the intention of the original framers of the Sumner Test. In the circumstances, I prefer to think that the phrase should receive the ordinary meaning of its wording rather than the less remedial meaning so rigidly applied by Commissioner McDougall.

In this respect, I have consulted with the six Deputy Commissioners appointed to date, and with their unanimous approval I have concluded that "subsisting incapacity to work" should be construed as meaning any substantial

incapacity subsisting for any proven time after liberation; and that, once such incapacity has been established to be the consequence of maltreatment, the quantum of an appropriate award will depend upon the extent and brutality of the maltreatment, measured, where possible, in the light of the physical condition or sensitivity of the prisoner concerned.

Such an interpretation leaves the way clear for awards of the moderate, and highly personal, solatium which the Ilsley Report recommends, and such awards need not be limited to cases where substantial pecuniary damage and permanent disability have been established. The concepts of pecuniary damage and subsisting incapacity remain as objective tests of the existence of compensable maltreatment, and are often valuable aids in estimating its severity, but they are no longer the criteria to be used in measuring its appropriate compensation. They are tests of eligibility, rather than the direct basis of calculating quantum.

With this background, I pass to consideration of the newly available materials bearing on the contention that the system of lump sum awards should be abolished, and an universal automatic *per diem* award adopted. Such materials may be grouped under the following heads:

- (1) evidence adduced in cases already heard before the Commission;
- (2) documentary materials on the files of claims in various stages of preparatory processing;
- (3) opinions arising in the course of informal discussions with the six Deputy Commissioners appointed to date, culminating in a two-day conference held pursuant to the recommendation of the Ilsley Report (p. 92) "for the consideration of problems arising or likely to arise generally";
- (4) materials furnished in the course of discussions with advisers of the Commission, and with experts of various departments of the Government of Canada, a group of whom sat in at part of the conference with the Deputy Commissioners;
- (5) written and oral submissions made to me by the National Council of Canadian Prisoners of War, a group of whom journeyed to Ottawa and greatly assisted me by their able presentation of the case for universal *per diem* awards. The group was accompanied by the President of the Dieppe Veterans' Association; and
- (6) evidence, mainly in the form of Statutory Declarations made by former Canadian prisoners of war held in custody in Europe.

From these numerous and varied sources of material, it is difficult to infer any general pattern of treatment of prisoners of war in Europe. That there was maltreatment is unquestioned. That it was brutal and continuous in cases coming under the direct custody of the Gestapo, SS, and other criminal German organizations, has already been accepted. (See Ilsley Report, p. 50; also Schedule, para. 2 (a) to Regulations established by P.C. (1952) 4267.)

But at the other end of the scale Canadian prisoners of war seem to have experienced at times "much kindness and fair treatment notably by German officers and soldiers of first war vintage". A few of the camps appear to have consistently furnished a reasonable standard of food and living conditions for their prisoners; among these were Stalag IV.B and Stalag II.D. The advantages of the latter camp were, however, largely offset by the fact that the camp served mainly for the organization of working parties, which were sent out to work on Pomeranian farms under highly unsatisfactory living conditions.

On the whole, there is an almost universal complaint, supported by credible evidence, that (with the few exceptions to which I have referred) the European prison camps provided their prisoners of war with extremely inadequate food, sanitation, medical care and living conditions. The German prison rations seldom rose above 1500 calories per day and were deficient in proteins, oils and vitamins. The most conservative deposition on this point is to the effect that "From beginning to end of the period of imprisonment, the basic ration as supplied by Germans was by no means equal to that supplied to base troops of German forces as required by the Geneva convention." It also seems clear that the general prison ration was considerably below that of German civilians, especially since the latter received supplementary rations when working, whereas prisoners of war frequently had to perform heavy and sustained labour with no additional rations.

The basic rations provided, with the addition of a normal supply of Red Cross parcels, combined to form a bare subsistence nutrition, which prevented the occurrence of wholesale starvation and widespread deaths. During the numerous periods when Red Cross parcels were inadvertently delayed or were purposely held up or reduced by the captors, the prisoners suffered seriously "from malnutrition and especially from protein deficiency which was damaging to their health and lowered their resistance to disease."

In addition to the inadequacy of the food it was generally far from palatable, and frequently repulsive and nauseating. Staple items appear frequently to have included soup made from mangold tops or turnip tops, or occasionally from beans infected with weavils, or from horseheads with teeth and eyes left in; horsemeat stew; sour black bread; ersatz coffee or black mint tea; and a foul-smelling and foul-tasting cheese which came to be known among the prisoners as "fish cheese". Making all due allowance for the merely exotic nature of some of these items, one can only conclude that the menu had usually no appetizing quality to make up for its caloric and protein deficiency. Dysentery and stomach ailments were common results, and loss of weight was often formidable.

As to heating, there was very rarely an adequate provision of fuel. In cold weather, prisoners had to sleep with all clothes including great-coats,—often two or three together to pool their single blankets and their body heat. In some camps they spent cold days in bed to keep warm, in some they were denied this privilege. At certain periods, allegedly by way of reprisal for treatment of German prisoners in Africa, all mattresses were taken away, and the prisoners had to sleep on the bare boards. These boards at first numbered from 8 to 10, but many had to be burnt as fuel, and the remaining 4 or 5 made exceedingly uncomfortable sleeping accommodation.

Toilet and sanitary facilities were usually quite inadequate, particularly at night, when the men would be locked in and prevented from access. The supply of water was usually inadequate or drastically curtailed: the water would be turned on for a short fraction of the day, and there was such a rush to get enough water for drinking and cooking purposes that frequently no opportunity was left to get water for washing of the person or clothes. Scant provision was made to combat the hordes of lice, fleas, bedbugs, mice, rats and other vermin which in most camps seemed to operate unmolested.

Available medical supplies "varied from fair to zero". Apparently, as a rule, medical attention could be had only for serious illness or injury, and then frequently after undue and dangerous delays. The authorities failed to make use of talent available among the prisoners themselves.

Work parties, even when based on an exceptionally good camp such as Stalag II.D, were often over-crowded in their sleeping quarters, worked long hours on inadequate rations, and in many cases treated brutally. The German authorities deliberately resisted efforts to have custodians of such parties familiarized with the governing regulations, preferring that the custodians should be more free to enforce their own discipline, severe and often brutal as it was.

Though the Gestapo and kindred organizations directly operated only a small proportion of the POW camps, they apparently exercised a considerable degree of indirect influence in most of the camps by means of either permanent or casual representatives. Thus, the official security officer of a camp might be under the actual domination of an N.C.O. By this means even the best intentioned efforts of official camp authorities to improve the lot of their prisoners were often frustrated. During the frequent visits by Gestapo representatives and other outside inspectors the prisoners were kept on parade for long periods, while their personal belongings were ransacked and pilfered, and food taken or destroyed.

Reprisals on individuals and groups were frequently out of all proportion to trivial offences or gestures, and consisted of such punishments as standing at attention from 2 to 14 hours, solitary confinement for long periods, and withholding of mail and food and Red Cross parcels.

On occasions all the valuables possessed by groups of prisoners were confiscated and never returned.

Though sheer physical brutality was not common, the prisoners felt themselves subjected to a variety of more subtle forms of mental cruelty, apparently designed to weaken their morale. Family correspondence was frequently suppressed, and false rumors and threats systematically circulated. Under a directive issued by Hitler many Allied "Commando" troops, and other military units operating independently, were shot even if they attempted to surrender; others who were executed later in concentration camps were never given a trial of any kind. Prisoners were particularly affected (in varying modes) by the day-long tolling of a bell in an asylum adjoining their camp, on each occasion when the Germans executed a mental patient who had become unfit for work. Brutal floggings and even shootings were occasionally carried out in view of POW's with the apparent intention of terrorizing them. By such, and other methods, the mental and moral resistance of the prisoners was often attacked, and many insanities and mental breakdowns resulted.

It is the contention of the National Council of Canadian Prisoners of War that the inadequacy of rations, as well as many other deprivations, were deliberately imposed by the Germans, partly with a view to lowering prisoners' morale, and partly with the object of conserving their own food reserves. This contention is supported by the fact that numerous offers of preferential treatment were officially made to Canadian POW's in certain camps, but were always refused when it was learned that all prisoners were not to share in the offers. The basic ration would appear to have been deliberately fixed at a point where, supplemented by normal Red Cross parcels, it would reach a subsistence level. Any interruption or partial stopping of the parcels resulted in serious malnutrition and suffering.

Such is the general picture of life in the European prison camps, as painted by the depositions before me. But the most cogent complaints voiced by claimants are not so much against their regular treatment in established prison

camps, as against special incidents, such as the shackling of prisoners captured at Dieppe, transportation in cattle cars under unspeakably horrid conditions, and particularly against the "hunger marches" of the winter and spring of 1945.

The shackling of prisoners inflicted by the Germans in the fall of 1942 was in force for as long as 13 months. During the first 4 months, the tying up was extremely severe and oppressive, cords and ropes frequently being used in the absence of conventional shackles. This treatment caused painful sores on the wrists of many prisoners, and was exceedingly distressing at times of prevalent dysentery and other such ailments. For the remainder of the period the performance became gradually more perfunctory, and sometimes merely symbolic. The British Prisoners of War Department reports that the ill-effects were on the whole surprisingly small. It is apparent, however, that such unjustifiable treatment, with its accompanying humiliation and discomfort, may be presumed to have resulted in some incapacity, even as late as the time of liberation a year and a half after the discontinuance of shackling.

The so-called hunger marches took place in the winter and spring of 1945, shortly before the end of hostilities in Europe. Prisoners were moved by forced marches often through cold regions. Though there is no general evidence of physical brutality, it appears that little attention was usually given to the rations, sleeping quarters, clothing, or physical condition of the men. In fact, practically no rations were issued by the Germans, and the prisoners were obliged to rely on the scanty food which they could obtain by foraging for themselves. No replacements of clothing were available, and sleeping quarters and other living conditions were usually deplorable. The actual duration of the journeys was not often over two months, but the rigours of the marches were aggravated by the reduced vitality of the men, consequent upon a preceding period of malnutrition and poor living conditions. Many had to drop out, and the rest were kept going solely by the hope of early liberation. In many cases, immediately before liberation the prisoners were confined in the worst camps of their experience.

Fortunately, the hunger marches were almost immediately followed by the release of the victims. Otherwise serious permanent disability would undoubtedly have prevailed. As it was, they were taken to England and most of them were reconditioned by proper rations, rest, and hospitalization where necessary. It would appear that participation in the hunger marches was one of the principal causes of the almost universal incapacity to work noticeable in Canadian prisoners of war liberated from German custody.

Another feature which appears to have increased the hardship of many POW's in Europe was the atrocious conditions under which many were transported by rail. In numerous cases the prisoners were so crowded into cattle cars that they could not lie down or even sit for journeys lasting days or weeks. Rations and drinking water were often non-existent or extremely deficient. Prisoners were seldom allowed out of the cars, and toilet and sanitary conditions were most nauseating. I had until very recently no means of estimating the generality of such conditions of transport, but they were indeed suffered by large numbers of POW's.

Did the treatment of Canadian prisoners of war in Europe by their captors amount, in general, to maltreatment? And, if so, did it cause any general incapacity to work which subsisted after liberation?

It must be remembered that neither internment in itself, nor inevitable hardship or punishment justifiably imposed, nor slight or technical violations of

the Geneva Convention or other international understanding can be held to constitute maltreatment. Maltreatment involves either deliberate mis-treatment or an almost studied indifference on the part of the captors. Maltreatment, in addition, must be either atrociously brutal in itself (though not necessarily in the purely physical sense), or it must be so serious as to cause the victim an incapacity to work which subsists at least after his liberation.

From the materials before me, I have no difficulty in concluding that many of the conditions and deprivations imposed on Canadian prisoners of war in Europe constituted maltreatment and that, though not universal, it was so general that practically every Canadian POW must have undergone some degree of maltreatment during the course of his internment.

Of a group of over 3500 Canadian servicemen liberated from captivity in Germany in April and May 1945 (apparently a representative cross-section) it was found that approximately 90% had at least some degree of incapacity, in the sense of "loss or lessening of the power to will and to do any normal mental or physical act". This incapacity was relieved, in the majority of cases, after periods ranging from a week or fortnight to six months.

I have no difficulty in finding that this almost universal subsistence of incapacity to work found among POW's on liberation resulted from maltreatment which they suffered during their imprisonment.

But though maltreatment appears to have been fairly general, serious maltreatment does not appear to have been prolonged, in the sense of being continuous throughout the usual periods of imprisonment. It was rather sporadic or intermittent, and was frequently relieved by life in a reasonably well conducted camp, or by the fairness and kindness of considerate commandants and officials, while the results, at least, were moderated (though not regularly) by the availability of Red Cross parcels. It was, therefore, inevitable that the burden of maltreatment fell unevenly on individuals and groups among the POW's in Europe.

Nor do the materials before me point to any universal prevalence, in the German or Italian prison camps, of maltreatment comparable in brutality or seriousness with that suffered by the prisoners of the Japanese or by prisoners of the Gestapo and other criminal German organizations, or by prisoners held by the Germans in World War I.

I am, therefore, firmly convinced that a flat automatic award of \$1. *per diem*, or of any comparable amount, to all prisoners of war would be inequitable both as among groups, and as among individuals. In all but the exceptionally severe cases of maltreatment, it would be a discrimination against those who continued to undergo the more trying and more dangerous experiences of front line service.

Such an universal award would also, I fear, impose an undue drain on the corpus of the War Claims Fund. It is true, as the advocates of an automatic award urge, that the Fund is made up from former "enemy" assets. But it is equally true that claims for death, personal injury, and loss of and damage to property, have an established and recognized right to share in such funds. The necessity of due proportion between the total of maltreatment awards and the amount available to respond to other classes of war claims is discussed, in relation to assets of Japanese origin, in the Ilsley Report, p. 54. A similar consideration must not be lost sight of in relation to the assets of German origin.

On the other hand, I am impressed by many of the arguments and materials which have been advanced against the present system requiring individual proof of personal maltreatment and subsisting incapacity to work. The general conduct of a prison camp, or of a forced march, is a difficult matter for an individual prisoner to establish to the satisfaction of a tribunal. The more eloquent, and sometimes the less scrupulous, are apt to score an advantage over their more reticent comrades. As to the necessity of proving subsistence of incapacity to work: a general eagerness to circulate immediately after liberation, as well as other circumstances frequently beyond the control of the prisoners, have prevented many from being able to tender adequate documentary materials in corroboration of their claims.

Besides, the granting of lump sum awards, unless at least partially based on some recognized formula, must tend to be (in appearance, at least) to some extent arbitrary and inequitable. Six or more Deputy Commissioners, conducting hearings at widely separated regional points throughout Canada, are bound to entertain substantially varying views on a subject such as the appropriate amount of a "highly personal solatium". Review by a Chief Commissioner assists in the attainment of some degree of uniformity, but in the absence of a prescribed formula the reviewing Commissioner has an inadequate judicial background for assessment of findings made by the Deputies in their virtual capacity of juries.

In my opinion, the number of POW's in Europe who did not suffer some measure of maltreatment, with consequent incapacity subsisting after liberation, was a negligible fraction of the total number. A lesser inequity would therefore result from allowing that small fraction to share in maltreatment awards, than from entirely depriving a larger number of genuinely entitled claimants who are not in a position to submit adequate individual proofs. Even the requirement of individual proof of matters which the Commission already knows on a general basis would be an undue burden to which the National Council of Canadian Prisoners of War, rightly, I think, strongly objects.

These apparently conflicting findings lead me to the conclusion that claims for maltreatment of POW's in Europe can most equitably be settled neither by the adoption of an universal automatic award, with consequent abolition of the present system of lump sum awards, nor yet by retaining the present requirement that claimants shall establish the fundamental elements of maltreatment in each individual case, but by a method which would seem to combine the advantages of the two systems, while avoiding many of their potential discriminations.

There should, I think, be adopted a series of presumptions of fact, inferred from the general materials and information available to the Commission, and imported into the evidence adduced in the individual cases. Those presumptions would in turn be used in the establishment of a set of formulae designed to assist in the equitable computation of the lump sum awards appropriate to individual claims.

The suggested presumptions of fact are:

(1) That each Canadian prisoner of War in Europe suffered a degree of serious maltreatment, albeit sporadic and intermittent. The presumption should be rebuttable. For example (without suggesting that such a case might arise), if a claimant proves, as the sole factual basis of his claim, that he was

imprisoned a certain number of days in Stalag IV.B, I think the presiding Commissioner might very well hold that the evidence on the face of it rebuts the general presumption of maltreatment.

(2) That each Canadian POW in Europe suffered some degree of incapacity to work as a result of his maltreatment.

(3) That such incapacity to work subsisted, in each case, for some period or time after liberation. On the basis of the foregoing presumptions, a set of formulae should be adopted under the following 3 heads or categories:

CATEGORY (A) A "general basic" award *per diem*, applicable to all cases in which the presumption of maltreatment has not been rebutted, and designed as a solatium for the average degree of maltreatment, in point of seriousness and prolongation, which each individual POW may be deemed to have endured.

CATEGORY (B) An "additional semi-automatic" award, available to groups who have suffered some incidents of the general maltreatment which aggravate its severity and seriousness.

Precedents for such a method of adjudication are frequently found in the decisions of the late Commissioner McDougall, especially in his treatment of claims by prisoners who were forced to work in the salt mines. As to such cases he says at p. 10 of his Report:

"Almost is it enough for a claimant to prove that he was held a prisoner in such a camp to establish maltreatment and consequent disability."

cf. p. 85, *re Fraser*. "The conditions in the salt mines were so cruel and brutal, and the work so heavy as to amount, in the language of Lord Justice Younger, to 'a singularly cruel and dangerous form of slavery'."

p. 77, *re McCallum*. "Very few, if any, prisoners withstood the rigours of the salt mines without some resultant disability."

p. 182, *re Jackson*. "Were it not for the abundant evidence which we have as to conditions in the Beinrode salt mines, his story would not carry conviction." (Award \$700.) cf. p. 81, *re Connelly*.

To a lesser extent Commissioner McDougall made awards to prisoners who were forced to work in the coal mines even where, contrary to his usual requirement, evidence of maltreatment and of resulting disability was meagre. (p. 98, *re Morin*; p. 135, *re Brown*).

The "aggravating" incidents which should entitle a claimant to an additional semi-automatic award in the cases now under consideration are:

(1) *Shackling of prisoners captured at Dieppe*.—Since the resulting incapacity had in most of these cases been largely overcome by the time of liberation, the semi-automatic award should be a modest amount related to the estimated four months of more oppressive tying up. This, of course, should not prevent individual claimants from showing that the hardship imposed by their "shackling" was more intense, or of greater duration, or resulted in a more serious incapacity.

(2) *Forced participation in the "hunger marches" of early 1945*.—For the considerations which I have previously mentioned respecting these incidents, it is proper that an additional semi-automatic award for maltreatment should be made to all ex-prisoners who establish their forced participation in the "hunger marches" of the winter and spring of 1945. For the sake of uniformity, the quantum of the award in each case should be based on the established duration

of the march, with an additional fixed allowance to cover an estimated preceding period of unjustifiable malnutrition, which served to debilitate the strength of the prisoners and to aggravate the effects of the marching conditions.

(3) *Direct custody by the Gestapo, etc.*—The prisoners who were directly held by the Gestapo and other criminal organizations of the Germans appear to be at some disadvantage in recovering awards in due proportion to their treatment. In the first two cases to come before the Commission, one was entitled to an automatic award for 75 days, the other for 165 days. Neither could prove any specific incapacity, though the maltreatment in each case was exceptionally brutal and continuous. In my opinion, equity requires that in this class of cases a subsisting incapacity should be presumed to the extent required to enable each claimant to receive the minimum award which I shall recommend for aggravated maltreatment (i.e. *Category (B)*).

(4) *The so-called "Dieppe march" of 1942.*—The majority of the prisoners taken at Dieppe in August 1942, including many wounded personnel, were subjected to a series of marches of intense rigour and degradation. Most of these prisoners were marched practically unclad and unshod. Food and drink were scanty and sporadic. Many were subjected to gross obscenities and derision; others to excessive punishments, occasionally amounting to death by peremptory shooting. The unjustifiable maltreatment of this series of marches lasted intermittently for almost three weeks, and merits a semi-automatic award without corroboration or proof or individual details. Marches of a similar nature were endured by groups of prisoners captured at other points; though I have not received sufficient materials to make a specific recommendation regarding them at this stage, I believe that their pattern, also, was so general as to enable presiding Commissioners to relax the usual rules regarding individual proof and corroboration.

(5) *Transportation in box-cars.*—In fairness to the Deputy Commissioners, I may explain that this topic was discussed at our first general conference. We then decided that we had not at that time sufficient proof of the generality of maltreatment in the course of such transportation, to warrant a semi-automatic award. More recently, however, I have had so many instances of this kind presented to me that I now conclude the horrid conditions prevailing on such voyages to have been almost, if not entirely, universal. Overcrowding, bad and scanty rations, thirst, discomfort, confinement, almost entire lack of reasonable toilet and sanitary provisions, with resulting dysentery and other ailments, were so general that proof of individual details is superfluous. Trips of this kind should be dealt with by a semi-automatic award.

CATEGORY (C) A "special individual" award for any unusually serious maltreatment established by an individual claimant, whether in further aggravation of any of the foregoing items; or by way of exceptionally brutal treatment, physical or mental; or arising from unusually extreme malnutrition or living conditions; inadequacy of clothing and shelter especially during periods of enforced labour; unjustifiable refusal or neglect to provide reasonable medical care; or otherwise.

Having concluded that there should be a general basic award for maltreatment in the case of prisoners of war in the European theatre, I must now consider the appropriate amount of such general award, as well as of the additional semi-automatic awards and of special individual awards to be made

in cases of aggravating incidents. Since neither pecuniary damage nor permanent disability should form the basis of an award, the proportion of claims granted may be expected to be more numerous and the amount of individual awards smaller, than in the maltreatment cases decided after World War I.

Four considerations should apply in the fixing of a scale governing the granting of general and semi-automatic awards:

(a) They must be large enough to provide a substantial, though moderate, solatium to the persons maltreated;

(b) Since it is no longer necessary that the awards should form a complementary compensation for pecuniary damages, they should be so "moderate" as not to effect a discrimination in favour of prisoners of war as against those not taken prisoner, (See Ilsley Report, p. 52);

(c) They should comprise a total large enough to form an impressive (albeit largely ineffectual) warning to potential and future belligerents that maltreatment of prisoners is not to be tolerated; and

(d) That total should not be so large as to constitute an undue drain on the Fund, to the substantial exclusion of other categories of valid war claims.

The amounts which I shall propose have been arrived at with careful consideration of each of the foregoing factors. What I recommend is not the abolition of lump sum awards, but the adoption of certain established formulae to assist in an equitable computation of appropriate lump sums. Unquestionably the proposed formulae will result in the presentation of a greatly increased number of claims. If such claims are justifiable that result is not to be deprecated. I am confident that the expenses of adjudication will be substantially reduced by the resulting simplification in the disposition of claims, particularly by avoiding (in most cases) the formidable expense of protracted regional hearings.

The greatly extended use which will be made of documentary adjudications in case of the adoption of the formulae which I recommend will also result in the avoidance for nearly all claimants of substantial expense, delays, and psychological strain which would otherwise necessarily be involved in personal prosecution of oral hearings.

I may conclude this portion of my report by saying that very little detailed information has been presented to me regarding the conduct of prison camps by the Italians. There was apparently less deliberate unkindness on the part of Italian captors, but the general condition of the camps does not appear to have been any better than in those operated by the Germans. As this was doubtless partly due to conditions created and maintained by the Germans in Italy, I have not attempted to draw any distinction between the two sets of camps. The total or average time spent in Italian custody was small, and the same presumptions and formulae should apply.

FINDINGS AND RECOMMENDATIONS

To summarize the foregoing observations, I find that in military prison camps in Europe in which Canadians were imprisoned during World War II there prevailed maltreatment, sufficiently serious, general and prolonged, though sporadic, intermittent, and widely varying in degree, to justify the payment (in all cases where the presumption of maltreatment is not rebutted) of a general basic *per diem* award to Canadian military personnel held in such

camps, for the duration of their imprisonment. I also find that certain aspects of treatment by the Germans of groups of prisoners of war in their custody formed aggravating incidents in the maltreatment of prisoners subjected to such incidents, and were sufficiently serious and general in such groups of cases to justify the recommendation of an additional semi-automatic award upon proof of subjection to any such aggravating incident.

As claims for general and additional awards will normally be intermingled, it would appear that the most satisfactory method of dealing with all claims by ex-prisoners of war in Europe, or by their surviving dependents, would be for the Commission, acting upon general evidence and information now before it, to import into each individual case the following presumptions of fact:

- (1) (rebuttable, that each Canadian prisoner of war in Europe suffered a degree of serious maltreatment, albeit sporadic and intermittent;
- (2) that each Canadian POW in Europe suffered some degree of incapacity to work as a result of his maltreatment; and
- (3) that such incapacity to work subsisted, in each case for some period or time after liberation.

The Commission should then proceed to assess the lump sum appropriate to the presumed or established maltreatment in each case on the basis of the following formulae:—

CATEGORY (A) for the total period of imprisonment, a general award of 20 cents per day;

CATEGORY (B) in addition, for the following aggravating incidents, if established:

- (i) for the first four months of enforced “shackling” \$60.00;
- (ii) for forced participation in a “hunger-march” of early 1945, 80 cents per day of the duration of the march, with an additional \$50.00 for the preceding period of unusual and unjustifiable malnutrition, which served to debilitate the strength of the prisoners and to aggravate further the effects of the marching conditions;
- (iii) for any period of direct custody by the Gestapo or other criminal organization of the Germans, 80 cents per day;
- (iv) for forced participation in a “Dieppe march” of 1942 (or in a similar march following capture at another point, if reasonable *prima facie* proof of maltreatment is tendered) \$20.00;
- (v) for maltreatment during transportation in box cars, per voyage, \$20.00; and

CATEGORY (C) a special individual award for any unusually serious maltreatment established by an individual claimant,—in such sum as the proper tribunal may consider just and equitable to recommend, in view of the objective severity of the treatment or its subjective effects upon the individual maltreated.

There should, I think, be certain limits within which the amount of a lump sum should normally be confined. I recommend the following minimal and maximal limits:

(a) Minimum, applicable to each case in which an award is made, under Category (B) or (C), for some aggravating incident or unusually serious

maltreatment, \$200.00; this minimum should not be applicable to cases in which only the general basic award is granted under *Category (A)*;

(b) Maximum, applicable to all cases, but subject to the foregoing minimum, \$1.00 per day of the total period of custody;

(c) Normal upward limit of \$600.00. This limit is based on the discarding of the measure of "pecuniary compensation" and the substitution of "moderate personal solatium". It should be subject to exception in a very few cases of maltreatment involving unusual severity and brutality.

In conclusion, I may recommend that all presumptions and formulae applicable to prisoners of war should also be imported into claims for maltreatment of Canadian merchant seamen.

As to Canadian civilian internees in Europe, I make no general finding, and therefore recommend that each case be adjudicated individually according to the present War Claims Rules.

(Sgd.) THANE A. CAMPBELL
Chief War Claims Commissioner.

APPENDIX "SUPP. L"

HEADNOTE, (1949) 2 D.L.R. 640.

Laane and Baltser v. Estonian State Cargo & Passenger Steamship Line

*Supreme Court of Canada, Rinfret C.J.C., Kerwin, Rand, Kellock
and Estey, JJ.—February 28, 1949.*

International Law—Conflict of Laws—Confiscatory nationalization Decree of *de facto* foreign Government—Effect on foreign merchant ship in Canadian port—Whether Canadian Court will implement Decree—Public policy.

The Courts of Canada will not give effect to a nationalization Decree of a confiscatory character issued by a *de facto* foreign government and purporting to have extra-territorial effect where such Decree seeks to reach a merchant ship (or the proceeds of the sale thereof) in a Canadian port where such ship has never been in the possession of the foreign Government although the owners are citizens of and domiciled in the foreign country. This principle applies to a nationalization Decree which provides for compensation of only 25% of the value of the nationalized property. Hence, the Canadian Courts will recognize the rights of the private owners who were in possession of the ship at the time of promulgation of the foreign Decree.

Per Rand, J.: A common law jurisdiction will not enforce directly or indirectly the penal or revenue laws of another state; and no state will apply a law of another which offends against some fundamental morality or public policy. In this case the *de facto* foreign Government was carrying out a fundamental change in the constitution of the foreign state by establishing state control of property and means of production, and the Courts of Canada will not aid in the execution of such a fundamental political law in relation to property not within the jurisdiction of the foreign state.

NOTE: Also reported (1949) S.C.R. 530.

Distinguished in *re* *Lourie*, Commission Case No. 9890.

APPENDIX "SUPP. M"

HEADNOTE, (1962) Ex.C.R. 69.

Whitehead *et al.* vs. The Minister of National Revenue

Exchequer Court of Canada, before Thurlow, J.—August 4, 1961.

The appellants in 1952 made application to the War Claims Commission for compensation for property owned by them in Czechoslovakia which was partially destroyed by the German Army in World War II. The Commission recommended payment out of the War Claims Fund to each of the appellants and that such amounts should bear simple interest from January 1, 1946 at the rate of 3% per annum. On October 10, 1958 this recommendation was approved by the Treasury Board and on October 17, 1958 cheques were forwarded the appellants' counsel by the Department of Finance together with a letter stating that the cheques enclosed represented the payments recommended by the War Claims Commission together with interest to October 10, 1958.

In assessing each of the appellants for the year 1958 the Minister added to the income reported by them the amount referred to as "interest" in the Commission's award. In an appeal from the assessments

Held: That the payments take their nature not from the motives for making them, or from what they are called, but from what in substance they are.

2. That in the case of each appellant the amounts paid was (sic) a capital grant no part of which was "interest" or "received as interest" within the meaning of s.6(b) of the *Income Tax Act*.

NOTE: See Commission Case No. 1486, *re Whitehead*.

INDEX

Index

ABBREVIATION.—

SOPF—Satisfaction Otherwise Provided For.

NOTE.—

Numbers refer to pages of this book.

ADMINISTRATION OF AWARDS, 47, 53, 63

AGREEMENT, 578

ALBERTA, 433

ANNUITY, BY, 63, 262

ASSIGNMENT, 50, 333

BRITISH COLUMBIA, 259, 276-7, 306, 370, 581

DEPT. VETERANS AFFAIRS, 270, 277, 483, 703

FAMILY, 459-61, 563

FORMAL, required, 48, 63, 692

dispensed with, 53, 63, 482, 549, 573, 622, 654, 670, 673, 681

Italian law, 675

GUARDIAN, natural, 48, 250, 271, 555, 573

JOINT CHEQUE, 372

MINISTER OF FINANCE (Italian Treaty), 36

NEW BRUNSWICK, 256

NEWFOUNDLAND, 501, 573, 622, 654, 671

ONTARIO, 269, 339, 343, 557, 564, 634, 673, 691

QUEBEC, 456, 579, 624, 642, 695

Universal legatee, 384, 642

RELIGIOUS ORDER, 566

SASKATCHEWAN, 482

SUBROGATION, when, 269-70, 332-4, 340-1, 444

TAX, INCOME, 218, 249, 371

TRUSTEE, 48, 350-6, 456, 673, 695

WIDOW, 523, 573

CANADIANS, CLAIMS BY, 5-6, 28, 99, 107,

151-3, 180-1, 302-4, 322, 615, 655, 676, 723

LOSS, status at, 5-6, 100, 180-1, 600, 661

Canada, Govt. of, 48, 149

Charitable associations, 541, 573-4

Company, 6, 23, 28, 104-7, 363-6, 450, 483, 573-4, 600-4, 696-700

recommended, future, 6, 23

Shareholder, 107, 148, 603-5, 615, 619, 683, 706

Death, of claimant, 239, 301, 306, 308, 623, 691

Domicile, common law, 53, 101-2, 236, 237, 329-30, 360-2, 440, 469, 532, 560-2, 563, 564, 586-8, 635, 646, 655

(born Philippines), 662

lost, 440, 539-41, 565, 595, 723

not established 285-6, 608, 681

Dual Nationality, 103, 528, 709-13

German, 528, 709-13

Hungarian, 518-9

United States, 577-8

Father born in Canada, 323, 661

Indirect claims, not,

United States, 483

French, 547-9

Newfoundland=Canada, 102, 544-9, 622

Not Canadian, 240, 539, 592, 600, 606, 629-30,

642, 659, 662, 672, 679

Serviceman, 28, 186, 311, 315, 396-7

Reserve Unit, not, 605

Polish, 508

U.N. Nationals, 466-9, 599, 672, 676, 679

PRESENTATION, citizenship at, 5-6, 51-3, 100, 180-1, 661

Beneficiary, non-Canadian, 623, 681

abatement, 343

non-subrogation, 290, 541, 548

when immaterial 239, 301, 306, 308, 623, 624-5, 675, 691, 722

unborn, 557

British Subject, 5-6

Deemed, 28, 263, 323

Departmental rulings, 52-3, 263, 676

Dual, when immaterial, 578

Equitable (nascent), 61, 246, 392-3, 563, 589, 635, 645

Italian Treaty, under, 560, 594-5, 599

Loss of, 6, 383, 578

PROCEDURE, re, 51-3, 588-9

CLASSES OF CLAIMS, *See* DEATH CLAIMS; INJURY CLAIMS; MALTREATMENT CLAIMS; PROPERTY CLAIMS

CODE, *See* PROCEDURE AND JURISDICTION

CONFISCATION, prior to loss, *See* PROCEDURE AND JURISDICTION: GENERAL REPORTS

COUNTRIES, (*See also* SOPF)

AUSTRIA, 10-11, 137, 239, 246, 464, 471-5, 513-4, 586, 609-19, 638-9, 653, 658, 669, 670, 718

BATAVIA, 428-9

BELGIUM, 15, 92, 137, 305, 384

BORNEO (North), 12, 93, 137, 338

BRUNEI, 12, 63, 93, 137

BULGARIA, 137, 666-7

BURMA, 137, 402-3, 666

CHINA, 137, 257-8, 278, 304, 316, 322-3, 332, 340, 360, 375, 399, 412, 481-2, 540, 597, 599, 620, 635, 664, 666

CZECHOSLOVAKIA, 10-11, 137, 240, 246-9, 339-40, 446, 470-5, 482, 500, 511-14, 537-9, 542, 582-3, 613, 629, 685

DANZIG, 137, 532

ESTONIA, 137, 217, 668

COUNTRIES—*Conc.*

- FRANCE, 15, 91, 138, 254-7, 310, 346, 359, 464, 536, 576, 629
- GERMANY, East, 240, 370, 507-9, 605-8, 659, 617-8
West and West Berlin, 15, 138, 231, 385-6, 464, 490-4, 515, 532, 664, 709
- GREECE, 494-6, 647-8, 681
- GUERNSEY, 137, 285
- HONG KONG, 138, 245, 256-7, 258-60, 357, 360, 363, 367, 392, 444, 462-3, 558-9, 620, 641, 664
- HUNGARY, 14, 63-4, 200, 518-20, 583-4, 635, 657, 660
Treaty, 14, 30, 36, 519-20, 584
- INDO-CHINA, 89, 138, 663
- INDONESIA, 138, 428
- ITALY, 13, 64, 88-9, 139, 193-8, 435, 466-9, 501, 560, 592, 594-6, 599-600, 608, 623-6, 639, 673-6, 683, 704, 713
- JAPAN, 13-4, 90-1, 139, 313, 325, 477-8, 569-71
- JERSEY, 137, 236, 301
- KOREA, 480-1
- LATVIA, 292
- MALAYA, 14, 92-3, 139, 269, 324, 341, 408, 457, 558
- MANCHURIA, 315-6, 330-1, 412, 422, 424
- MONACO, 139
- NETHERLANDS, 12, 92-3, 139, 229, 637-8, 652
- NORWAY, 139, 284, 464
- PHILIPPINES, 14, 93, 139, 290, 376, 400, 412, 420, 458-9, 521, 693
- POLAND, 10-11, 139, 240, 328, 464, 509, 532, 600-5, 664
- ROUMANIA, 14, 91, 139, 613
- SWITZERLAND, 464
- THAILAND, 12, 139
- TRIESTE, 466-9, 599-600, 672, 679
- UNITED KINGDOM, 12, 237
- YUGOSLAVIA, 139, 490, 517

DEATH CLAIMS, 9-10, 107-114

- CIVIL ACTIONS, analogy, 9-10, 110-11
- CIVILIAN, death of, 109, 181
- COMPUTATION, 253, 332-4, 373, 425, 461-2, 521-4
- DEBT, not, 293-4, 552-3
- DEDUCTIONS, 253, 287-8
Acceleration, 112-3, 253, 332-4, 409, 461-2, 520-4, 649-50
when not applicable, 253, 286-9, 338-9, 654
Accident Insurance, 113, 286
Compassionate Allowance, 287
Life Insurance, not, 113
Son's contributions, 409
Survivor Benefits Plan, 522-3
Workmen's Compensation, 286-9, 522
- DEPENDENTS, 112, 181, 410, 447-8, 522
- DISLOCATION, general, 62, 333, 499, 501, 524, 563, 654, 671
- EXPECTATION of support, 293-4, 553, 648-50
- MALTREATMENT, resulting from, 8, 108, 423, 424-5
award, not deducted, 29
Presumption of cause, not, 399, 402, 423
- PECUNIARY, Loss only, 9-10, 22, 112-4
- PENSION, barring claim, 12, 22, 109
Similar provision, 12, 22, 109
When not deductible, 196
- PRIORITY, *See* PRIORITIES

- SERVICEMEN, not, 109
- TRAINING, specialized, 425
- WARFARE, caused by actual, 9, 109
none in Canada, 109

EVIDENCE, *See* PROCEDURE AND JURISDICTION, PROOF OF LOSS

EXPENSES, 147-8, 544, 666

- ABROAD, 147-8, 586, 619
- ADMINISTRATION, of, 19, 59-60
- APPORTIONMENT, invalid claims, 539, 583-4
- CANADA, in, not allowed, 148, 268, 373, 435, 619, 651
allowed as deduction, 268
- FACTORS, 241-2, 433, 447, 648, 666
Ineligible claimants, 642
Invalid claims, not, 544, 583-4, 631
Legal dispute, not, 429
Travelling expenses, not, 501, 653
Unnecessary, 371, 653
Translation, 501
- INTEREST, not, 249, 544, 619
- JOINT, 583
- PRIORITIES, not applicable, 249, 447, 476, 511-14, 527, 544, 619
- UNITED KINGDOM, in, allowed as deduction, 268, 373

FUND, *See* PRIORITIESGENERAL RECOMMENDATIONS, *See* PROCEDURE AND JURISDICTION

INJURY CLAIMS,

- PERSONAL, 9-10, 107, 114
- AGGRAVATION, 260, 262, 391, 407, 428, 482, 566, 665
- APPORTIONMENT, 571, 665
- DAMAGES, general not, 9-10, 374, 574
Pecuniary only, 9-10, 114-5, 184, 374, 574
Remote not, 110, 114
Shock, when not, 461, 554
Recommendation, future, 22

DISEASES

- Anemia, 590-1, 706
- Appendicitis, 481
- Arthritis, traumatic, 407, 580
- Cancer, cause uncertain, 411
- Depression, 262, 391
- Gallstones, cause uncertain, 410
- Gastric ailment, 556, 660
- Heart ailment, 396, 534-5
- Hernia, 243
- Hypertension, 396
- Influenza, 575-6
- Intestinal disorders, 337, 481
- Mental incapacity, 693
- Predisposition, 260, 428
- Shock, 442-3, 459-61, 554
- Spinal injury, 360
- Tuberculosis, 251, 260, 428
- Ulcers, 482

ESCAPE, privations not, 665

- INSURANCE, Accident deductible, 117
Provincial Health, deductible, 260

INTEREST, commencement of, 272, 310, 695

INJURY CLAIMS—*Conc.*

- MALTREATMENT, resulting from, 9, 108, 345, 693
 - Presumption not available, 381, 391, 400, 404, 423, 426, 476-8, 569
- PENSION, barring claim, 22, 109
 - similar provision, 22, 109
- PRIORITY, *See* PRIORITIES
- PROOF, not adequate, 345, 381, 404, 434, 478-81, 556, 559, 585, 590-1
- SUBJECTIVE, assessment, 260
- SURVIVAL, of claim, 22, 116
 - for Estate, 116
- TRAINING, specialized, 521
- WARFARE, caused by actual, 9, 108
 - none in Canada, 109
- WAR, State of, not compensable, 381, 404, 421, 559

INSURANCE, 15, 113

- ACCIDENT, 15, 113, 286-9, 533-4
 - Survivor Benefits Plan, 522-3
 - Workmen's Compensation, 286-9, 522
- AVAILABILITY, (non-), 358, 368, 457, 463
 - Premiums prohibitive, 358, 457
 - Neutral ships, 457
- CONSIGNMENT, before war, 312
- DEDUCTION of, 15, 145, 253, 330
 - Health, 260
- LIFE, not deductible, 15, 113-4, 533-4
- PENSIONS, etc.,
 - absolute, 22, 109, 520
 - satisfaction, 22
 - recommended, future, 22
 - irrelevant to maltreatment, 405
 - when not deductible, 189
- PREMIUMS, deemed deductible, 245, 294, 353, 486, 636
 - not compensable, 136-7, 144, 245, 358, 636
 - prohibitive, 358, 457
- PROPERTY, 15
 - Cash, 235, 397, 411, 550, 554-5
 - Household goods, 636
 - Personal effects, 234, 253, 294, 330, 347, 375, 636
- SHIPS, 15, 234, 245, 353, 446, 451-5, 485-6, 548
 - Neutral (prohibitive), 457
- VALUE, not exclusive evidence of, 375, 654, 719

INTEREST, 30, 168-9, 185, 456, 720

- APPORTIONMENT, 579
- COMMENCEMENT of, 30, 169, 185, 272, 288, 440, 694
 - Mesne date, 253, 259, 310, 332, 360, 398, 410, 579
- DEATH, 167-8, 253, 259, 288, 295, 373
- DEDUCTIONS, adjustment, 291, 297, 373, 568
 - from interest factor, 233, 238, 384, 558
- INJURY, personal, 167-8, 253, 259, 273-4, 310, 439, 694
- ITALIAN losses, 1, 13, 599-600
- MALTREATMENT, none, 167, 251, 252, 293, 449, 479, 660
- MESNE DATE, *See hereunder* COMMENCEMENT
- PERSONAL INJURY, *See hereunder* INJURY
- PRIORITY, 49, 167, 527
- PROPERTY LOSS, 34, 242, 249, 253, 256, 267, 269-70, 288, 295-6, 339
- RATE, 185, 333-4, 456, 488
- SIMPLE, only, 30, 47, 185, 527

ITALY, *See* ADMINISTRATION OF AWARDS; CANADIANS, claims by; COUNTRIES; PROCEDURE AND JURISDICTION; QUANTUM; SOFF

JURISDICTION, *See* PROCEDURE AND

MALTREATMENT, 6-9, 29, 117-34, 184, 201-216

- DEPENDENTS, Claims for, 7, 29, 133-4, 692, 718
 - Additional payments, 2, 21, 34,
 - Dependency, not established, 692, 718
 - Estate, 692
 - Father, employed, 357
 - Recommended, future, 22
 - Religious Order, 399, 422-3, 425-6, 505-6
 - Father and mother, 372
 - Misconduct, irrelevant, 277
 - Partial, 274-6
 - Vesting and survivorship, 276-7, 393, 691, 692
 - Widow, remarried, 264-5, 682-3

ESTABLISHED

- Cumulative incidents, 8-9, 210, 252, 261-2, 296, 323-4, 349, 372, 392, 432, 567-8, 585, 589-90
- Exceptionally severe treatment, 9, 212-4, 261-2, 267-8, 307, 308, 312-3, 329, 372, 396, 428, 431, 432-3, 564, 565, 660
- Formula, necessity of, 211-6, 251
- French, Vichy, Custody of, 488-9
- Germans, general, 6-9, 29, 128-33, 201-16
 - Criminal organizations, by, 7, 29, 128-33, 184, 201, 213, 215
 - Gestapo, 7, 201, 213, 307, 308, 329, 431, 565, 721
 - SS., 7, 184, 206, 292-3, 431
 - Reprisal camp, 328
- Civilians, 9, 216, 254, 284-5, 292-3, 336-8, 374, 590, 721
- Merchant seamen, 9, 216
- Prisoners of War
 - Box cars, 209, 213, 251, 289, 308, 588, 660
 - Food and living conditions, 207-8, 392, 564
 - Marches, 209, 212-5, 251, 308, 372, 588
 - Mental cruelty, 208, 324
 - Mess fees, deduction of, 289
 - Presumptions, 211-6
 - Punishment, undue, 208, 312-3, 315, 431
 - Shackling, 209, 212, 215, 251
 - Shooting, 311, 312, 429
 - "Shoot-up", 429
 - Work, 206-8, 212, 251, 267, 313, 369, 431, 564, 660

Incapacity, subsisting, 210-2, 215, 251, 267-8, 329, 348, 428, 431, 432, 585, 588, 598

Italians, custody by, 214, 289

Japanese-operated camps, 6-7, 119-33, 271, 278, 304, 317, 376, 379-81, 417, 478-9

Civilians, 7, 118-34, 184, 345, 379-81, 391, 403, 416-20, 479-81, 567, 661

Servicemen paid by Treasury Board, 7, 29, 34, 184

Dependents of, 7, 622

Lump sum awards, 9, 211, 214, 289, 449, 556, 591

Medical neglect, 251, 268, 328-9, 564, 660

Pension, when not deductible, 29

Priority, *See* PRIORITIES

Sporadic, 206, 210, 214, 449

MALTREATMENT—*Conc.*

NOT ESTABLISHED

- Dates, 304, 403
 - After hostilities, 403
 - After Japanese control, 478-9
 - Before capture, 312, 396, 405
 - Length, not main criterion, 314, 591
 - Short period, *See infra*, Presumption rebutted
 - Earnings, loss of, 282-3, 337
 - Escape, hardships during, 289, 299-300, 312, 406, 591, 665
 - Hospitalization, *See infra*, Presumption rebutted
 - House arrest, 7, 271, 278, 292, 305, 330-1, 379, 394, 400, 418-20, 478-81, 567, 575, 576
 - Incapacity, lack of proof of, 284-5, 337
 - Internment, mere, 118, 209-10, 418, 420, 489
 - Hiding, to avoid, 146, 290-1
 - Killing, unlawful, 22, 528-32
 - Recommended, future, 22
 - Pension, not relevant, 29, 205, 252, 296
 - Presumption rebutted, 9, 214-5, 349, 431
 - Hospitalization, 9, 296, 323-5, 344, 349, 406, 431, 466, 483
 - Short period, 9, 324-5, 348-9, 466, 598
 - Sport games, 405
 - Russians, custody by, 314, 343, 396
 - Technical, 369
 - Underground, custody by, 290, 420-1
 - Belgian, 462
 - Dutch, 463
 - ELAS, 494-6
 - Philippine, 290, 420-1
 - Wartime hardships, 117, 575
 - World War I, compared, 202-6, 210
- PECUNIARY, compensation not, 205, 252, 307, 313, 329, 428, 432
- SOLATUM, 9, 252, 307, 310, 360, 405, 422, 425, 506, 556, 570
- Additional Payments, 2, 9, 22, 34, 721

NOTICE OF CLAIM, 30, 39

CONTENTS, 39

- Date fixed, 30, 39, 61, 185, 703-4
 - for materials, 53-4, 616

INCLUSIVE, 17, 50, 521-2, 615

INDIRECT, 579

INFORMAL, may be, 39

- ITALIAN, late, 36, 194, 195-6, 596-7
 - extension, 64, 195-6, 198, 597

LATE, claims rejected, 168, 196, 579, 703-4, 720

NEWFOUNDLAND, blanket, 61-2, 670

NUMBER AND DISPOSITION OF CLAIMS,
See PRIORITIESPENSION, *See* DEATH CLAIMS; MALTREATMENT CLAIMS; INJURY CLAIMSPERSONAL INJURY, *See* INJURY CLAIMS

PRIORITIES, 19, 49-50, 162-5, 184, 527, 533

- CANADA, Gov't. of, 60, 661
- COMPANIES, Subsidiary, 488
- DEATH, 10, 49, 162-3, 253, 288-9
- EXPENSES, 165, 242, 249, 509-14, 527

- FUND, relation to, 14, 20-1, 28, 55, 59-60, 82-8, 95-6, 199, 200
 - Pooling, 95-6

INJURY, Personal, 10, 19, 162

INSURANCE, 15, 330

INTEREST, 165, 527

INTERIM PAYMENTS, 48-9, 181-2, 269

ITALIAN TREATY, 13, 60, 64, 527, 690

MALTREATMENT, 184, 210, 214

- NUMBER, OF CLAIMS, 15-20, 62-3, 533
 - Italian Treaty, 193-8,

ORDER, of payment, 60, 162-3, 184-5

- PROPERTY CLAIMS, 15, 20, 59, 162-3, 242, 249, 253, 288, 533, 690-1

PROCEDURE AND JURISDICTION, 4-5,
183-6, 377-9, 389-90

- ADMINISTRATION, by Sec'y. of State, 1, 28, 183
 - by Registrar General, *See* Government Organization Act, 1966

CANADIAN STATUS, 50-53

CHARITABLE ASSOCIATIONS, 377-9

- CODE, 1-3, 61-2, 169-73, 377-9, 389, 399, 400, *See* GENERAL REPORTS, *infra*,
 - Discretion, 61-2
 - Recommendations by Commissioner, 1, 5, 172
 - Future, 21-3
 - Regulations, 1, 27-34, 183-5, 189, 190
 - Rules of Procedure, 4-5, 39-54
 - Rules, War Claims, 1-2, 28, 169-73, 183

DISCONTINUANCE, not a bar, 332

EVIDENCE, onus and discretion, 171, 657

- Rules of, 4-5, 44-6, 171
- See* PROOF OF LOSS

- FINDINGS, of Deputy Commissioners, 5, 41, 286, 315-6, 334, 341, 389-90, 440, 482, 540, 564, 566, 573, 578, 651

- Revisions of, 5, 42-4, 169, 233, 325, 344, 377, 400-1, 465, 540, 574, 678, 695

- GENERAL REPORTS, 1-23, 59-65, 193-8, 201-16,
 - Advisory Commissioner, 1-2, 71-177
 - Austria, 10-11, 239-40, 246-8, 609-11, 629-30, 638-9, 669

Czechoslovakia, 10-11, 246-9, 630-1

Germany, 658

Hungary, 200

Italy, 193-8, 600

Maltreatment, 7-9, 201-16, 251, 466

Poland, 10-11

HEARINGS, 3-5, 40-1, 50-1

Consolidated, 50

Documentary, 5, 8, 9, 40, 50, 211

- Examiners, by Special, 4, 44, 325, 344, 403, 502, 627, 651, 665,

Ottawa, oral, 5, 40, 51, 683

Regional, 5, 40, 41, 51, 426, 437

- Review, 5, 42-4, 254-5, 315-6, 407-8, 610-19, 627-31, 465, 633

- Waiver of Deputy Commissioner hearing, 51, 605, 721

INTERIM AWARDS, 48, 181-2

INTERPRETERS, 47

ITALY, Treaty with, 1, 35-8, 188

Commissioner, 1, 37, 188

Regulations, 13, 35-8

PROCEDURE AND JURISDICTION—*Conc.*

- JURISDICTION, 377-9, 389-90, 480, 506
- NATIONAL STATUS, *re*, 52-3, 588
- NOTICE, inclusive, 17, 50, 521-2
- PRELIMINARY REJECTION, 5, 16, 40, 692
- PROCESSING, 4-5, 39, 42, 434
- REGULATION 4, 11, 31
- REPORTERS, 47
- SEGREGATED CLAIMS, 532
- STAFF, 4, 61
- SUBPOENA, 46
- SUBSIDIARY COMPANIES, 488, 664
 - non-Canadian, 664
- SURPLUS, to Consolidated Revenue Fund, 60, 172
- TREASURY BOARD, function, 5, 7, 11, 17, 21, 28, 31, 181, 183, 496
- TRIBUNALS, 3, 11, 169-70, 186
 - Chief Commissioner, 1, 28, 169-70, 186-8
 - Deputy Commissioners, 3, 11, 40-1, 62, 169-70

PROOF OF LOSS,

- ASPORTATION, 340, 510-14, 517
- CORROBORATION, required, 46, 234, 243, 414, 488
- EVIDENCE, 44-6, 171
- FALSIFICATION, deliberate, 60, 430
 - non-disclosure, when not material, 409
- FRAUD, of Custodian, not, 255, 310
- IMPROPRIETY, of submission, 377, 416
- INFERRED, 365-6, 678
- INSUFFICIENT, 536, 559
 - Cause, of, 304, 399, 402, 434, 478-81, 489, 556, 559, 572, 590-1, 657, 706
 - Date, of, 302, 566, 638
 - Documents, not authenticated, 482
 - Speculation, 397
- LOOTING, presumed, 135-6, 230, 241, 254-5, 339, 341, 368, 425, 500, 515, 570, 584, 620, 628, 722
 - not presumed, 302, 536, 633, 717
 - unrecognized govt, by, 500, 512
- ONUS, on claimant, 39, 46, 171, 399, 404, 515, 620, 657-8, 661

PROPERTY CLAIMS, 10, 11, 60, 134-161

- BANK ACCOUNTS, 232, 241, 539, 620, 632
- CANADIANS, *see* CANADIANS, Claims by
- COMPANIES
 - Non-Canadian, shares in, 619, 664, 685
 - Silent Partners, 606, 632
- CONFISCATORY MEASURES, 10-11, 62, 135, 239-42, 469-76
 - China, 375
 - Country, by unrecognized govt. of, 475, *see* PROCEDURE AND JURISDICTION—GENERAL REPORTS
- CURRENCY
 - Devaluation, 98, 232, 316
 - Inflation or Depreciation, 141, 232, 304, 620, 632
- Enemy character of owner, 135, 230-33, 599, 626
 - forced sale, 10, 136, 145, 517
- Italian Treaty, 599-600, 626
- Nationalization, 99
- Restitution, nature of, 11, 232, 247
- Wartime special measures, 135, *See* WAR, OPERATIONS OF,

DEBTS, when, not, 143-4, 620

DIVIDENDS, profits, income, 140-1, 599

GOODWILL, 140-1

INSURANCE, Companies not indemnified, 143

Policy, 517, 582

OWNERSHIP, 10, 11, 606 *See* PROCEDURE

AND JURISDICTION—GENERAL REPORTS

Agreement, not conclusive, 647-8

Alienation *after* loss, 197, 673-5, 704, 713Alienation *before* loss, 10-11, 458-9, 539, 584, 628, 639, 659

Canon law, when not, 413

Equitable, 663

not, 314, 693-4

Foreign, confiscation, *see* PROCEDURE AND JURISDICTION—GENERAL REPORTS

Gift, not proven, 537

Post-war restoration, not, 11, 247, 629-30, 639, 658, 669

Poverty, vow of, 346

Proof of, 10, 510-8, 537-9, 606, 647, 677, 683, *see* PROOF OF LOSS

Servicemen, by, 136, 366-7, 488-9, 643-5

Loss *after* death, 338-9

Tenancy-in-common, 634

Trust, 613

PENSIONS, Loss not compensable, 141, 305, 323

RENTALS and use, 140-1, 582, 647-8

SECURITIES, 241, 510-4

SHARES, 584, 599, 619

in non-Canadian companies, 599, 619, 685

of silent partner, 632

SILVER COINS, 280

WAGES, etc., when not, 21, 282

See QUANTUM—EARNINGS,

QUANTUM

- APPORTIONMENT, periods, 62, 322, 566, 584, 617-9, 629-31
 - non-Canadians, 256, 341, 386, 578-9, 608, 623-5, 642-3, 681
 - varying causes, 254, 376, 693-4
 - younger children, 522, 670
- CAPITALIZATION, 262, 288, 521-4, 670
- COMPUTATIONS, 48, 670
- CONVERSION, 159-61, 174-7, 232, 257, 304, 306, 312, 341, 582, 652, 666, 708, 717
- CORROBORATION, required, 46, 234, 243
- DEPRECIATION, deducted, 243, 334, 586, 717
 - Consumer goods, etc., 235, 305, 334, 374, 651, 717
- EARNINGS, loss of, 282, 308, 323, 337, 356, 360, 434, 585, 599, 672
- FACTORS, affirmative, 586, 651, 718-9
 - Market Value, pre-war, 152-9, 230, 233, 374, 456, 586, 651, 719
- Far East, 14, 341, 366, 559, 597, 620, 708, 720
 - 1941 advance, 257
 - decline of, 14, 703
- Replacement, Italian Treaty (post war), 13, 36, 89, 152, 592-4, 690
 - Japanese Treaty (post war), 91, 152, 716
- Specialized training, 521
- Transportation, 283-4, 376-7

QUANTUM—*Conc.*

- Inconclusive or negative
 - Cost, 233, 586
 - Education, 585
 - Inflation, 232, 316, 632
 - Insurance, 375, 654, 719
 - Legacy, loss, 585
 - Nazi contribution, 630
 - Repairs by Slovaks, 482
 - Repatriation, 506, 571, 647
 - Replacement, 152, 233, 425, 586, 651
 - Sentimental value, 146
 - Unpaid employee, 623

INCOME, loss of, not, 282, 585, 599

INSURANCE, when deductible, *see* INSURANCE

ITALIAN, Treaty *versus* W.C. Rules, 13, 36, 592, 599, 626

- Geometrician *vs.* Treasury, 675, 714
- Replacement, 13, 36, 89, 152, 592-4, 690

JURY, finding as, 241, 262, 333, 376, 500-1, 513, 518, 538, 544, 563, 584, 607, 621, 719

LEGACY, loss, not, 585

MALTREATMENT award, when not deductible, 189
additional, 2, 33-4, 696, 721

MORTGAGE, when not deductible, 240, 370, 720
effect of, 142-3, 370-1, 720

NEGOTIATION, not, 620

PARTNERSHIP, silent, 632

PENSION, cause of loss uncertain, 407-8
when not deductible, 189

RENTALS, 628-9, 632, 647

VALUATIONS, 282-3, 334, 545-9, 654
cars, 282-3, 334, 621
confused, 411
library, 425
money claims, 150-1
shares, 620
ships, 484-7, 545, 549, 654
incidental, 547-9

REFERENCE, 1, 186, 201, Terms of, *see* PROCEDURE AND JURISDICTION

SHIPS,

CARGO,

- Alexander Hoegh*, 449-55
- Calgarolite*, 449-55
- Canadolite*, 449-55
- Collingdoc*, 654
- Esso Boston*, 449-55
- Kenordoc*, 654
- Montrolite*, 449-55
- Munster*, 347-8
- Muskogee*, 449-55
- Penelope*, 449-55
- Portadoc*, 654
- Prescodoc*, 654
- Sarniadoc*, 654
- Terra Nova*, 557
- Torontodoc*, 654
- Troisdod*, 654
- Victrolite*, 449-55

FISHERY

- Andavaka*, 350-6
- Mildred Pauline*, 244-5

NAVAL

- Voltaire*, 267-8

PASSENGER & CARGO

- Athenia*, 12, 93, 234, 236, 242, 252, 268, 297, 307, 311, 329, 332, 356, 373, 397, 407, 410, 434, 437-44, 448, 456, 465-6, 533-5, 579, 651
- Caribou*, 286, 366, 452-5, 461-2, 521, 534, 535, 544, 549, 550, 554, 573, 643, 654, 670
- Lady Drake*, 234, 446, 484-8, 557
- Lady Hawkins*, 293, 342, 484-8, 498-9, 622
- Pipestone County*, 636
- Rose Castle*, 550
- Zam Zam*, 283, 290, 373, 457, 541

PRISONER TRANSPORTS,

- Enoura Maru*, 580
- Oryoku Maru*, 580

SOPF (*Satisfaction Otherwise Provided For*), 11-15, 63-4, 88-95, 665

APPORTIONMENT

- Disallowed items, 283-4, 558
- France, 15, 31, 233, 717
- Individual shares, 253, 298, 608
- Interest adjustments, 568
- Interest factor only, 231, 233, 558
 - Canada, Govt. of, 231, 384, 386, 558
 - France, 233
- Interim refundable, 269, 291
 - United Kingdom, 435
- Segregated claims, 527, 533, 581
 - United Kingdom, 237, 297-8, 459-61

BATAVIA, 428

BELGIUM, 15, 31, 92, 384, 657

BORNEO, 12, 338

- Brunei, 12, 63, 93

BURMA, 435, 445

CANADA, Govt. of, 12, 229-31, 234-5, 237-9

- Subrogation of, 12, 229-31, 234-5, 237-9
- Indebtedness to, 256, 661, 722

CONVERSION, Formula, 652, 656, 717

DEEMED, received, 11-12, 262, 327, 426-7, 435, 665

EFFORTS, sufficient, 254, 341, 385, 585, 703

- Refusal appropriate, 460

- Refusal not appropriate, 232, 258, 435

FINLAND, 12, 90

FRANCE, 15, 31, 91, 564, 585, 653, 665, 716-7, 722

GERMANY (West), 11, 15, 31, 59, 232, 385, 632

- Corporation not eligible, 15, 465, 524, 664
- Late filing, 596
- Reg. 4(4), 15, 31, 456-7, 565, 633, 647, 652, 665

GRATUITOUS, payment, 573

- Advanced by employer, not, 422

HONG KONG, not, 428

HUNGARY, not, 14, 30, 63-4, 89, 190, 200

IGNORANCE no excuse, 12, 516, 653, 705

INDO-CHINA, 63, 663

INDONESIA, 428

INSURANCE distinguished, 15, *see* INSURANCE

INTERIM, 12, 269

ITALY, General, 13, 64, 88-9, 193-8, 593, 596-7, 600

- Special, 36, 525-7

- No compensation from Italy, 598

SOPF—*Conc.*

JAPAN (*Treaty*), 13-14, 90-1, 258, 313, 325, 386,
426, 477-8, 502-5, 567-71, 572, 703, 706-8,
715-6

Commission not agency, 325

Conversion uncertainty, 706-8, 718-20

MALAYA, 14, 92, 94, 261, 262, 341, 457-8, 487-8

NET DEDUCTION, 261, 268, 297

NETHERLANDS, 12, 91, 231, 652-3

NEWFOUNDLAND, 622

ONUS, on claimant, 516, 653, 719

PHILIPPINES, 14, 92, 297, 377, 401, 422, 577-9, 664,
694-5, 705

REG. 8 (*Schedule*), 11, 31, 231

REG. 4(4) (*Regulations*), 11, 31, 231

ROUMANIA, 14, 30, 90, 190

SUBROGATED, when, 444, 490, 496-7

to Govt. of Canada, 48-9, 384-5

THAILAND, 12, 90

TRANSPORTATION, substituted, 236

UNITED KINGDOM, 12, 92, 435, 456

Athenia, (*See SHIPS*) 12, 13, 93, 267, 448, 456,
534

Contingent, 459-61

When not deemed, 267, 459-61, 637, 650

Sterling Currency, 411

Prize Ship, 547-9

YUGOSLAVIA, 490

TRIBUNALS, *see* PROCEDURE AND JURIS-
DICTION—TRIBUNALSWAR CLAIMS FUND, *see* PRIORITIES

WAR, OPERATIONS OF

World War II. 28, 96-9, 633

Not, 258, 375, 422, 566

ALLIES, loss caused by, 135, 666

Action by enemy not essential, 109, 135

Allied air raids, etc., 666

and several unreported cases

Allied orders, when, 146, 335, 428

when not, 146, 150, 358, 368

Allied regulations and laws, not, 146

British cruiser, 350-2

COLLABORATION, disqualifies, 104

Proved, 528, 640, 699-700, 709-13

Volkliste, 592

Disproved, 492-4, 624-5, 685-90

MARINE PERIL, not, 557

STATE OF WAR, 107-8, 136

Loss caused by, not compensable, 107-8, 285,
310, 404, 483, 576

Death, 402-3

Injury, personal, 107-8, 284-5, 291, 328, 381,
421, 554, 559, 571, 575-6, 585

Property, 136, 229, 236, 483, 515, 576, 620,
709

Wages, etc., 282

Wartime controls, 232-3

APPENDIX "SUPP. N"

CASE No. 1414

Re: Langley

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further argument in support of the contention that the disallowance should be reversed and an award recommended.

The claim in this case is for loss of property falling into three groups:

- (a) household furnishings and personal effects stored in a warehouse of the De Gruijter Company at The Hague;
- (b) fixtures left by the claimant in rented premises at The Hague, and allegedly removed by the Germans during their occupation of Holland;

The latter group included bathroom equipment, clothes presses, cupboards, and electric light fixtures. In Holland, apparently, houses are leased without such fixtures, and the tenant must provide them at his own expense.

- (c) a deposit of \$310.21 standing to the credit of the claimant in the Rotterdam office of The American Express Company.

I take the learned Deputy Commissioner's report to imply findings that the goods in group (a) were pilfered or stolen by persons unknown during the period of the German occupation of Holland, and that the fixtures falling under group (b) were removed by the Germans during the occupation of Holland, presumably with the knowledge of the landlord and on the basis of some arrangement made with him. In neither case was the claimant able to recover any of the goods or fixtures lost, with the exception of a quantity of clothing which was found to have been destroyed by moths. I entirely agree with the opinion of the learned Deputy Commissioner that destruction by moths is not the direct result of any operation of war, and that therefore the claim for loss of goods so destroyed (\$184.56) must be disallowed.

As to group (a), the learned Deputy Commissioner decides that the claimant's loss is not compensable under the War Claims Rules because it is not established either that the pilfering or theft was done by the Germans or their satellites, or that the pilfering or theft amounted to "looting" within the meaning of the Rules. He defines looting as an offence committed by groups or bands of persons under cover of the confusion that accompanies any disaster, such as war, and distinguishes it from acts of pilfering, theft, or burglary.

For the reasons mentioned at the top of page 58 of his Report, the learned Advisory Commissioner on War Claims (page 57) concludes that claims for loss with respect to property should be admitted as war claims where the loss was caused by:

".....

2. physical loss or disappearance of tangible things caused by theft or looting.....in an area occupied by an enemy....., whether the looting or theft was by members of armed forces or not, looting to be

conclusively presumed where the cause of the loss or disappearance cannot be established."

I am of the opinion that the distinction drawn by the learned Deputy Commissioner between pilfering, theft, or burglary on the one hand, and looting on the other hand should not prevail against the claimant's entitlement to compensation, for two reasons:

- (1) no matter what meaning may be assigned to the word "looting", it is to be conclusively presumed where the cause of loss or disappearance cannot be established;
- (2) the basis of compensation for loss of goods in enemy-occupied territory is not limited to looting, but includes theft, which in turn would include pilfering and burglary.

As to the learned Deputy Commissioner's observation that there is no evidence that the goods were pilfered or stolen "by the Germans or their satellites", such evidence is not, in my opinion, necessary. It seems to me to make no difference, under the War Claims Rules, whether the theft or looting was done by the Germans or their satellites, or by the inhabitants of the occupied area, or even by Canadian servicemen or civilians.

On the basis of the Deputy Commissioner's findings that the goods in group (a) were pilfered or stolen in an area occupied by an enemy, I am therefore impelled by the War Claims Rules to the conclusion that the claimant suffered a compensable loss in respect of those goods.

The circumstances surrounding the disappearance of the fixtures in group (b) are somewhat different. Assuming, as the Deputy Commissioner apparently infers, that the fixtures were taken by the Germans on the basis of some arrangement with the claimant's landlord, the loss would be compensable if they were confiscated by the German armed forces in an area occupied by the enemy. If, on the other hand, the confiscation was made by authority of the civilian government of Germany, the loss would be compensable only if the confiscation was made on the ground of the enemy character of the Canadian owner of the fixtures. Although the exact nature of the confiscation is not disclosed, the inference seems to me to be clear that the fixtures were confiscated either by the German armed forces, or by the German civilian authorities on the ground of the enemy character of their Canadian owner. I am therefore of the opinion that the loss of such fixtures is compensable under provision numbered 3 on page 57 of the Advisory Commissioner's Report.

As to group (c), consisting of deposit with the American Express Company, information now furnished to the Commission indicates that the claimant is being compensated in full for this loss through Deutsche Revisions-und Treuhand. In any case, I agree with the conclusion of the learned Deputy Commissioner that there is not sufficient evidence to establish that the loss, if any, on this item was the direct result of an operation of war. It should therefore be disallowed.

The valuations placed by the claimant on his lost property seem to be reasonably moderate, and are based on the report of an experienced surveyor at The Hague. The surveyor's estimates are intended to be the reasonable market value at the time in the month of May 1940. It must be borne in mind that the basis of compensable loss under the War Claims Rules, so far as losses in Europe are concerned, is the fair market value at 30th June 1939. A careful examination of the claimant's inventory, in the light of numerous similar cases adjudicated by the Commission, leads me to the conclusion that a fair estimate of the value of the goods for whose loss the claimant is entitled to compensation from the War Claims Fund might properly be fixed at \$2900.00.

It is noted that the claimant has already received from the Government of Canada capital compensation in the sum of \$1,940.00, in addition to \$750.00 for

replacement of clothing. These items must be deducted from the capital award now recommended. The claimant also received from the Canadian Government \$4,562.35 as interim non-capital compensation for such items as loss of use of furniture and other goods. Following the policy adopted by the Commission in such cases, non-capital compensation must be deducted from the interest factor of the present award. As the interest deductions will clearly exceed the total interest factor of the award, it will be simpler to recommend that the total of the interest factor be paid directly to the Government of Canada by way of subrogation.

Further consideration of the amount of compensation received by the claimant from the Government of Canada for replacement of clothing leads to the inference that the sum of \$750.00 paid to the claimant under that item includes some compensation for the clothes which were destroyed by moths, and which this Commission is unable to regard as compensable. If such is the case, it would clearly be inequitable to deduct, from the compensation recommended by the Commission, an amount received by the claimant on items which are not compensable under the War Claims Rules. There is no way of fixing exactly the amount which the claimant did receive for his moth-eaten clothes, but, in proportion to the valuations estimated for his other goods, it would be in the vicinity of \$140. The amount deductible as capital compensation otherwise provided for would therefore properly be \$1940.00 and \$610.00 or a total of \$2550.00.

For the reasons above mentioned, I reverse the recommendation of the Deputy Commissioner, and I recommend that the claimant be paid \$2,900.00 as an award for loss of property at The Hague, such payment to be in orders of Priority Nos. 3(a) and 3(b); subject to deduction of \$2550.00 received from the Government of Canada.

I further recommend that there be paid to the Government of Canada, by subrogation to the entitlement of the claimant, and as repayment pro tanto of compensation advanced by the Government to the claimant, the said sum of \$2550.00, with simple interest on \$2,900.00 from 1st January 1946 at 3% per annum.

This is a case in which payment in respect of the claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other sources. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Dated this 1st day of March, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1415

Re: Overholt

The claimant originally included in his claim an item of RM. 31,942 deposited in a German bank. At the hearing before Deputy Commissioner Hyndman on 10th September 1954 that branch of the claim was abandoned, but it was subsequently revived in February 1957.

In a recent communication the claimant states that I refused his solicitor a hearing, and that I had been very adamant in refusing to grant him a further hearing or to consider any payment to him. As a fact the claimant and his counsel had at least three hearings, and the voluminous file of correspondence speaks for itself. I did feel bound, in accordance with the provisions of Rules of Procedure Nos. 4 and 5, to intimate repeatedly to the claimant that loss of money values through inflation or depreciation of currency was not a compensable loss under the War Claims Rules. But when his then counsel advised me (by letter dated 13th June 1957) that he nevertheless wished to have a rehearing at an early date, he was informed by letter of 19th June 1957 that a hearing would be available for him at any time within the next ten days. The claimant did not reply to this intimation, nor did he ask for a later appointment for hearing.

Since the making of my previous reports on 3rd February 1955, 20th May 1955, and 7th June 1956, the claimant has indirectly submitted an elaborate statement, augmented by an argument by his present counsel, in support of the contention that the loss of his bank deposit should be distinguished from a loss due to inflation and should therefore be regarded as compensable under the War Claims Rules.

It is true that the exclusive provisions of Para. 6 on page 63 of the Report of the Right Honourable Advisory Commissioner are aimed primarily at residents or investors in enemy or enemy occupied countries. The operative sentence of Para. 6 is, however, very explicit in its direction that "If divested money claims were revested in their owner within a reasonable period after the war after a shrinkage due to inflation or depreciation their owners, therefore, have no valid claim to compensation. It follows that if there was no revesting the claimant cannot claim the undepreciated value of his money or money claim."

I can see nothing in the present claim which would distinguish it from the type last referred to, or which would exempt it from the exclusions enacted by Para. 6.

Even, therefore, if the claimant could succeed in establishing a valid claim for compensation for the loss of his bank account, it would be a claim for the loss of a "right to currency" and the quantum of his award would have to be measured by the rate of exchange prevailing at 30th December 1949 (Advisory Commission's Report, p. 73). The net results of the 1948 currency conversions in Germany were that each original 1000 marks produced 65 deutsche marks. The claimant's 31,942 reichmarks would on that basis have yielded about 2080 deutsche marks, which, at the prescribed 1949 rate of exchange would be the equivalent of Canadian \$545.00.

From that gross valuation would have to be deducted the amount which the claimant was offered on 17th March 1950, namely "one for twenty" or 5% of the value of his original deposit. This would amount to about DM. 1600 or the equivalent of \$420.00. The sum offered was payable over three years, could not be converted into dollars, and could be spent only in Germany.

The claimant states that he refused the offer on account of its restrictive terms, and because it might jeopardize his claim in Ottawa. Neither of those reasons is sufficient to take the offer out of the category of "compensation otherwise provided for", (especially since the original deposit was in Germany), and its amount would therefore have to be deducted from any compensation which this Commission might recommend.

It is therefore obvious that the maximum capital award available in the event of the establishment of a valid claim would be the difference between \$545.00 and \$420.00, or a net \$125.00.

I am of the opinion, however, that no such claim has been established. Confiscation by an enemy civilian authority is compensable only if it was

carried out by reason of the enemy character of the Canadian owner of the property. The blocking of the claimant's bank account (which for some unaccountable reason was deposited in Germany at a time when such action could be clearly forecast) appears to have been a wartime measure of foreign exchange control, and not to have been directed specifically at Canadians or other enemies of Germany. There would therefore be no valid claim under the War Claims Rules, particularly if restitution at the shrunken value of the original currency were made within a reasonable period after the war. As the terms of the restitution offer were made in pursuance of arrangement dictated by the Allied Occupation forces, its timing and amount must be considered to have been reasonable.

I therefore recommend that the claim for loss of bank deposit be disallowed.

Dated this 13th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1421

Re: Barriere

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant stresses the fact that in 1944 he engaged an expert Huissier to make an official valuation of the extent of losses, and that the official's estimate was \$11,860.00.

It must, however, be remembered that this Commission is not allowed to base its estimate of compensability on the replacement value of goods lost, or even on their cost value. The criterion which this Commission must apply is the reasonable market value at 30th June 1939, with allowance for depreciation from that date until the time of loss. It is noted that a high proportion of the goods lost by this claimant were of a nature which exposed them to a high percentage of depreciation in market value.

As the learned Deputy Commissioner reached his estimate after careful consideration on the basis of an oral hearing, I do not think that it would be proper for me to attempt to vary the valuation which he fixed. I may, however, add that his valuation seems to me to be fair and even generous in the circumstances.

As to the \$354.82 received by the claimant from the French Government for loss of use of furniture, the learned Deputy Commissioner expresses some doubt as to whether, or not, this amount should be deducted from the award, but concludes that it should. By comparison with other cases in which somewhat similar awards have been received for loss of use, I am of the opinion that the payment received should be deducted only from the interest factor of the present award. . .

Dated this 14th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1422

Re: Sweeney

At the very outset, about \$2,700 must be deducted from the claim for lost antiques, jewellery and paintings inasmuch as substantial corroborative evidence of the extent of the loss on that score was not offered on the claimant's behalf...

Dated this 27th day of December A.D. 1954.

(Sgd) C. W. MARION
Deputy Commissioner

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

In pursuance of Rule of Procedure No. 20, I notified the claimant that it might be necessary for me, on review, to reduce the recommended award by approximately \$2,500.00, being the estimated amount which the claimant should have received from a policy of War Risk Insurance, if she had prudently effected such a policy. It is, I think, to be assumed that the claimant, on shipping such an important consignment of goods, which she values at \$12,000.00, and which the Deputy Commissioner assesses at \$5,000.00, would effect a policy of War Risk Insurance to cover at least a portion of the value of the goods.

The claimant has not taken exception to the proposed downward revision, and I therefore hold that the goods which she shipped as cargo on the SS "Lady Drake" should have been covered by War Risk Insurance to the extent of at least 50% of their value, and I am therefore obliged to hold that the claimant is deemed to have received \$2,500.00 as the proceeds of a policy of war risk insurance which she should, in prudence, have effected, and which would have cost her approximately \$75.00. It is therefore necessary to deduct \$2,575.00 from the amount recommended by the learned Deputy Commissioner.

With this variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$2,425.00 as an award for loss of property at the sinking of the SS "Lady Drake", such payment to be in order of Priority No. 3(a), and to bear simple interest from 4th May 1942 at 3% per annum.

Dated this 25th day of March, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1431

Re: Forster

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials or review.

I have, however, found it necessary to notify the claimant, under the provisions of Rule of Procedure No. 20, of a probable reduction in the amount of the award recommended by the Deputy Commissioner. The claimant has replied to that notice, and contends that the full amount of the award recommended should be approved.

The items found by the Deputy Commissioner to have been lost may be summarized as follows:

Clothing	\$1,000.00
Jewellery	600.00
Cash	300.00
	<hr/>
	\$1,900.00

As to the jewellery, the items appear to have been very carefully considered by the Deputy Commissioner, and I would hesitate to disturb his findings.

As to the clothing, the Deputy Commissioner allowed the full amount claimed, on the ground that the goods had all been recently purchased for the claimant's trip, or given to her by her mother, whom she had visited. In considering claims for loss of such goods, the Commission has adopted the principle that goods such as clothing in the possession of the consumer, no matter how new the goods may be, must usually be subjected to some percentage of depreciation, in order to arrive at the fair market value at the time of the loss. A careful examination of the list of articles lost leads to the conclusion that not more than \$800.00 should be allowed for the articles of clothing lost.

As to the cash, the claimant says that she left Canada in the spring of 1939 with \$700.00 or \$800.00 on her person, and that she still had about \$500.00 on her return trip. The Deputy Commissioner allowed her \$300.00 on this item.

Without throwing any doubt whatever on the claimant's veracity, it was obviously very imprudent for her to carry such large sums of money in currency. The principle of the War Claims Rules regarding insurance suggest by analogy that the cash carried by the claimant should have been protected by the normal insurance, which would have been afforded by a letter of credit or by travellers' cheques. The usual practice of the Commission is not to allow more than \$150.00 for loss of currency whose possession is not fully corroborated and which was not protected by some of the normal types of insurance.

Apart from the above-mentioned detailed considerations, it should be noted that the award recommended by the Deputy Commissioner is very considerably larger than the awards usually recommended for losses by "Athenia" passengers, and is still further out of proportion to the amount awarded to the claimant by the Government of the United Kingdom.

For the foregoing reasons, I consider it necessary to reduce the items of the award allowed by the Deputy Commissioner to the following:

Clothing, et cetera	\$ 800.00
Jewellery, et cetera	600.00
Cash	150.00
	<hr/>
	\$1,550.00

With these variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$1,550.00 as an award for loss of property at the sinking of the SS "Athenia", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$402.00 received from the Government of the United Kingdom, with interest adjustment from 19th April 1948.

Dated this 16th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1433

Re: Bedard

... There is no doubt that because of the war this claimant sustained the losses of which she complains and which for a person of her circumstances are substantial. These losses, however, were caused, not by war operations, but by the existence of a state of war which affected in some measure the lives and fortunes of large numbers of people in every country of the world. Such being the case she has not an admissible claim under the War Claims Rules. In order to have an admissible claim her loss must be directly due to operations of war which is not the case here. I am therefore obliged to recommend that her claim should be disallowed.

(Sgd) JAMES FRANCIS, Q.C.,
Deputy Commissioner

Note:—Disallowance confirmed by Chief War Claims Commissioner, 30th November 1956.

CASE No. 1435

Re: Chandler

..... Having reviewed the Deputy Commissioner's report, I approve without substantial variation his findings and recommendation, though I would base the disallowance of claim in respect of living expenses, rail transportation from Glasgow to Bedford, and return fare to Canada, on a somewhat different ground from that adopted by the learned Deputy Commissioner. If the claimant had paid his fare to Canada on the *Athenia*, and had been obliged to incur the further expense of paying a second time for transportation to Canada, I believe such further expenditure would have been compensable. The general evidence before the Commission, however, in hundreds of similar cases, indicates that free substituted transportation to Canada, as well as living expenses during the necessary period of delay in Great Britain or Ireland, was provided either by the shipping company or by the British Government. If the deceased Frederick Ernest Chandler omitted to take advantage of the availability of such substituted transportation, he must nevertheless, under the War Claims Rules, be deemed to have received compensation otherwise provided in those respects...

Dated this 12th day of September, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1456

Re: Proulx

..... Though this claimant did not, at the time of her internment, possess Canadian domicile in the statutory sense, she had been married since 1925 to a natural born Canadian who had at all times retained his Canadian domicile. I therefore agree with the learned Deputy Commissioner that the claimant should be regarded as having had domicile in Canada from the date of her marriage...

Dated this 22nd day of March, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1469

Re: Barton

.....At the hearing an oral submission in respect of her eligibility under the War Claims Rules was made by Mr. Fulton on her behalf, and it was then agreed that he should present a written submission. Since then, however, there has been brought to my attention the case of Mrs. Alice Rane Hackett (*Case No. 9504*) in which the circumstances are similar to those in the present case. Mrs. Hackett was born in Ceylon in February, 1895, and was married in the Straits Settlements in July, 1926, to Mr. Hackett who had been born in India but had subsequently acquired Canadian domicile. They were both interned with their children in Malaya in 1942 and they came to Canada following their liberation in 1945. As in the case of Mrs. Barton, Mrs. Hackett did not come to Canada until after the end of World War II.

In the case of Mrs. Hackett, it was held by this Commission that her husband had Canadian domicile from 1900 when he came to Canada continuing until his internment in 1942, and that he had Canadian domicile at the time of his marriage in 1926. It was held also that since the domicile of a married woman is the same as, and changes with, the domicile of the person on whom she is, as regards domicile, legally dependent (*Dacey-Conflict of Laws*, pp. 101 and 107), Mrs. Hackett's common law domicile has been, since the date of her marriage, and is now, Canada. The question of domicile having been thus resolved it was found that Mrs. Hackett had Canadian status at the relevant times and was eligible to be compensated for maltreatment under the War Claims Rules.

There would not appear to be any reason to distinguish between the cases of Mrs. Hackett and Mrs. Barton. Both claimants were born in the Far East, both married prior to World War II to husbands who had Canadian domicile, both came to Canada with their husbands at the end of the war and both were Canadian citizens at the time of presentation of their claims. I find, therefore, following the decision in the case of Mrs. Hackett, that Mrs. Barton's common law domicile has been since the date of her marriage on June 6, 1936, and is now, Canada, and that she is eligible to claim compensation for maltreatment under the War Claims Rules.....

(Sgd) JAMES FRANCIS, Q.C.,
Deputy Commissioner

July 30, 1956.

CASE No. 1471

Re: Mayrand

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

The learned Deputy Commissioner assessed the claimant's compensable losses under the War Claims Rules at \$16,315.40. He also finds that the claimant received \$9,126.52 under the United Kingdom War Damage Act and \$9,290.00 capital advances from the Government of Canada. The United Kingdom payment was received on the 10th September 1947, and the Canadian Government advances were received in the following instalments:

3rd February 1942—	\$2,000;
4th April 1942	—\$2,000;
5th March 1949	—\$5,290

(of which \$2,000 was paid at an earlier undisclosed date).

If, as the Department of Finance now submits, and the learned Deputy Commissioner finds, the total of \$9,290 received from the Government of Canada must be regarded as capital compensation, it is obvious that the claimant has received, from combined United Kingdom and Canadian sources, capital compensation in excess of his compensable claim against the Canadian War Claims Fund including interest. It will therefore be necessary to recommend that the balance of the present award, after deducting the amount received from the United Kingdom Government, be paid by subrogation to the Government of Canada as a refund pro tanto of the capital advances made to the claimant.

Having reviewed the report of the Deputy Commissioner, I approve it in substance without variation, and I recommend that there be paid to the Government of Canada, by subrogation to the *entitlement of the claimant*, and by way of refund pro tanto of capital advances made to him, the sum of \$16,315.40 as an award for loss of property in London, England, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b) and 5, and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$9,126.52 received from the Government of the United Kingdom, with interest adjustment from 10th September 1947.

Dated this 11th day of October, A.D. 1956

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Since the making of my report dated 11th October 1956, it has been brought to my attention that the amount received by the claimant under the *United Kingdom War Damage Act* consisted of \$8,330.53 capital, and \$795.99 interest. This breakdown does not affect the situation as between the claimant and the War Claims Fund, but necessitates a restatement of the subrogated award recommended for payment to the Government of Canada. Only the capital of the British award should be deducted from the general award now recommended, whereas the accrued interest paid under the *United Kingdom Act* should be deducted from the interest factor of the award now recommended.

To give effect to this variation, I would amend my former report and restate it as follows:

I recommend that there be paid to the Government of Canada by subrogation to the entitlement of the claimant, and by way of refund pro tanto of capital advances made to him, the sum of \$16,315.40 as an award for loss of property in London, England, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b) and 5 and to bear simple interest from 1st January 1946 at 3% per annum, subject to deduction of \$8,330.53 capital compensation received from the Government of the United Kingdom, with interest adjustment from 10th September 1947; and subject to further deduction from the interest factor only of \$795.99, being the Canadian equivalent of interest received by the claimant on the United Kingdom award.

Dated this 2nd day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Since the making of my recommendation on 2nd November 1956 there has been enacted Order-in-Council P.C. 1958-1467 which amended section 5(a) of the War Claims Regulations by providing that interest on property losses occurring on land that was not at any time during World War II included in enemy or enemy occupied territory may be paid from the date of the loss.

In order to bring my former recommendation into line with the recently enacted amendment, I recommend that in addition to the payment already recommended there be paid to the Government of Canada by way of subrogation to the entitlement of the claimant: Interest on \$16,315.40 from 27th September 1940 to 1st January 1946 at 3% per annum. If, after adjustment of interest on the United Kingdom payment and on the interim compensation advanced by the Government of Canada, there remains any amount over and above the balance due to the Government of Canada, such amount should be paid to Mr. Leon Mayrand.

Dated this 12th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1472

Re: Low-Beer

Deputy Commissioner Hyndman has submitted to me his report dated 14th January 1959, and his supplementary report dated 24th April 1959, setting forth his findings and recommendations, with his reasons therefor. The Claimants have been furnished with a copy of each of the Deputy Commissioner's reports.

On review, Mr. Francis Low-Beer, as Counsel for the claimants, has submitted an elaborate series of arguments, supplemented by a very able oral presentation before me in Ottawa, in support of the contention that some of the Deputy Commissioner's awards should be increased and that awards should be granted for other branches of the claims which were disallowed by the Deputy Commissioner.

I have very carefully reviewed these claims in the light of the arguments presented on review, and I shall deal with the various branches seriatim in the order in which they were decided by the learned Deputy Commissioner.

The late Max Alfred Low-Beer and his wife Mrs. Edith Low-Beer were naturalized in Canada on 7th February 1944 and 19th April 1944, respectively, and did not since lose their Canadian status. Mr. Low-Beer died on 7th April 1954; as he presented his claims during his lifetime, it is not necessary to record a finding as to the national status of the beneficiaries of his will.

A. The first claim will therefore be that for damage to property in Austria. Mr. Low-Beer has appealed against the inadequacy of the Deputy Commissioner's estimate of damage to the Austrian property. He has also submitted numerous arguments and authorities based on the contention that it is contrary to Canadian public policy to recognize confiscations based on racial persecution, and that for various other reasons the confiscations of the Austrian property should not be regarded as having divested Max Alfred Low-Beer of the ownership of the property before the time when he became a Canadian national, or before the time of the damage by operations of war. He further contends that although two parcels of land, on which the majority of buildings were located, were expropriated in November 1943 and were restored by the post-war Restitution Court, his family did not have to go to court to get back the other two parcels, nor did they require any court order to resume operations and rebuild the factory after the war. He admits, on the other hand, that practically the whole of the damage claimed was caused to the property located on the expropriated parcels.

After very careful consideration of all aspects of this branch of the claims, I feel obliged to follow the principles adopted as a result of the meetings of

Deputy Commissioners in February 1958, and followed in such cases as *Whitehead*—No. 1486, *Kahn*—No. 9869, *Mahler*—No. 9623, *West*—No. 9770, and *Arthur and Paul Lourie*—Nos. 9890 and 9891, to the effect that the Commission must recognize the divesting of ownership by the German authorities in Austria following the Anschluss, and that the Commission cannot recognize post-war restoration measures as having a retroactive effect to the time of loss or damage by operations of war. I therefore have no alternative but to approve the Deputy Commissioner's recommendation for disallowance of this branch of the claims. In that event, it is not necessary for me to consider the appeal from the Deputy Commissioner's estimate of damages.

B. The next branch of the claims is that for damage to factory in what was formerly Germany, and now Poland. Mr. Low-Beer did not seriously dispute the disallowance of this branch of the claims, as the evidence of confiscation and forced sale completed before Max Alfred Low-Beer became a Canadian is clear and admitted.

C. The third branch of the claims is for damage to apartment block known as Cejl 6 in the city of Brno, in Czechoslovakia. Mr. Low-Beer contends that the estimated damages to this property were unduly curtailed by the learned Deputy Commissioner's recommendation. The building, alleged to have been damaged to 80% of its value, was a very impressive structure having been newly constructed in 1937 at a cost of 3,300,000 kronen. The learned Deputy Commissioner accepted its description as being a building of eight stories with elevator, and central-control heating. It had 37 stores with street fronts, with offices and living apartments in the upper stories. It was built in the form of a "U", with an arcade surrounded by shops. The claim is limited to 1,690,000 kronen, representing the outlay for repairs in 1945-47. At the 1939 exchange rate, the cost of repairs would amount to about \$58,000.00, whereas at the 1949 exchange rate the Canadian equivalent would be about \$36,000.00. Although the Deputy Commissioner was of the opinion that the proof of estimates for repairs seemed genuine, he considered that in all the circumstances an award of \$25,000.00 would be fair and reasonable.

My opinion is that the claimant is entitled to an upward revision of this branch of the awards. In view of the original value of this building, and the very substantial damage caused to it by operations of war, the evidence of costs of repair do not seem to be at all exaggerated. The 1949 rate of exchange is the available rate least favourable to the claimant. It is highly probable that the repairs which could be effected in 1945-47 would not restore the damaged building to its former good condition, owing to scarcity of good quality building products during those years. This difficulty has been evidenced in such cases as *Heskey*—No. 10058. After reviewing all the circumstances, I would revise the estimate of compensable damage on this branch of the claims to \$35,000.00.

As to the possible effect of the outstanding mortgage on a claim for damage to the Cejl 6 property, I have reached the conclusion that the mortgage may properly be disregarded in this connection for the following reasons: (a) the evidence leads to an inference that the mortgage had been substantially reduced by income payments; (b) the land and (c) the residue of the buildings which were not destroyed would appear to have been sufficient security for the balance of the mortgage, if any, which remained at the time of the damage.

D. The next branch of the claims is for damage to apartment house Botaneska 14, which the learned Deputy Commissioner fixed at \$3,000.00. I consider that this estimate is as fair and reasonable as could be reached on the available evidence, and I therefore approve it without variation.

E. The next branch of the claims is for damage to a woollen mill and contents in Brno, Czechynska 14 and 23. The evidence is well documented in support of a claim for \$17,093.52 for the late Max Low-Beer's share of damage

to this property. Allowing for the subjective element in the claimant's evidence of damage, I am of the opinion that the amount assessed by the learned Deputy Commissioner might properly be increased, and I would recommend \$11,000.00 as a fair estimate of compensable value on this claim.

F. The next branch of the claims is that of Mrs. Edith Low-Beer in her own right. I consider that the learned Deputy Commissioner made as fair an estimate of the compensable loss as is possible in the circumstances, and I would approve his \$5,000.00 award without variation.

G. The late Max Alfred Low-Beer claimed \$52,363.00 for loss of securities and \$16,814.00 for loss of bank accounts in Czechoslovakia. There is no evidence of the continued existence of the bank accounts after January 1943. As to the securities, the amounts claimed show many discrepancies as compared with former inventories and documents, and as compared with the available evidence as to the conditions prevailing in wartime Czechoslovakia respecting the sale and trading of securities. There is considerable evidence to the effect that a number of the securities owned by the late Mr. Low-Beer were disposed of by forced sales after the date on which he acquired Canadian national status. The evidence of such sales, and of the amounts of the proceeds, is however largely indirect, partly self-serving, and in a large measure uncorroborated. Conditions of selling and trading securities in Czechoslovakia in 1944 and early 1945 were very stringent and uncertain. Although there is perhaps sufficient evidence to warrant an inference that some portion of the late Mr. Low-Beer's securities and bank accounts were lost to him by looting in the period of the war during which he was a Canadian national, I am unable from the evidence to conclude that the portion of his property so lost had anything like the value placed upon it by the claimant. The available evidence is, in my opinion, insufficient to support anything beyond a token award for those portions of the losses which may be inferred to have taken place within the relevant period. Placing myself in the position of a jury, I would assess the compensable portion of the claimant's losses on these branches of the claims at \$7,250.00.

H. The final branch of the claims is for damage to a pulp mill and machinery near Leoben in Austria, of which the late Max Alfred Low-Beer was owner of 168 shares, the total capital being 2000 ordinary shares. Mr. Low-Beer submits that the claim for \$11,700.00 is based not on replacement costs, as stated by the learned Deputy Commissioner, but on a ratio to the 1939 value. As a matter of fact, the estimate of damage would appear to be compounded partly of a replacement factor and partly of a ratio to the 1939 market value. As a token to the merit of Mr. Low-Beer's argument, I would fix the compensable loss midway between the two bases estimated by the learned Deputy Commissioner, namely \$7,725.00.

On the basis of the foregoing revisions, the total award in favour of the Estate of Max Alfred Low-Beer may be summarized as follows:

Branch C	\$ 35,000.00	
D	3,000.00	
E	11,000.00	
G	7,250.00	
H	7,725.00	
	<hr/>	\$ 63,975.00,

while the award to Mrs. Edith Low-Beer in her own right remains at \$5,000.00.

As to costs, vouchers have been presented for approximately \$280.00 expended in Czechoslovakia. It would, however, appear that substantial additional sums have been expended in the preparation of claims arising in that country. I am of opinion that the following amounts would reasonably compen-

sate the claimants for expenses incurred abroad in the preparation of the Czechoslovakian claims: to Estate of Max Alfred Low-Beer \$700.00; to Mrs. Edith Low-Beer \$100.00.

With the foregoing variations, I approve the report of the Deputy Commissioner.

I accordingly recommend that there be paid the following amounts as awards for losses in Czechoslovakia, each payment to bear simple interest from 1st January 1946 at 3% per annum:

(a) To Edith Low-Beer, Executrix of the will of Max Alfred Low-Beer, deceased, \$63,975.00, such payment to be in orders of Priority Nos. 3(a) to 6(b) inclusive;

(b) To Mrs. Edith Low-Beer in her own right, \$5,000.00, such payment to be in orders of Priority Nos. 3(a) and 3(b).

I also recommend that there be paid the following amounts as awards for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimants to establish their claims, such payments to be without interest, but not to be taken into account for priority purposes:

(c) To Edith Low-Beer, Executrix of the will of Max Alfred Low-Beer, deceased, \$700.00;

(d) To Edith Low-Beer in her own right, \$100.00.

Dated this 30th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1479

Re: Estate of Cullen

The claim is as follows:

- | | |
|--|-------------|
| (1) for personal injury to the said deceased who died 15th February 1951 | \$4,968.60; |
| (2) loss of property | \$ 639.07 |

all due to the sinking of the *S.S. Athenia* by enemy action on 3rd September, 1939.

Eligibility to claim is doubtful inasmuch as the Department of Citizenship and Immigration have ruled that he was not a British subject with domicile in Canada. The following is an excerpt from a memorandum from the Chief, Admissions Division, Department of Citizenship and Immigration to the Registrar of Canadian Citizenship:

"It will be observed from copy of letter dated November 23, 1953, from Mrs. Catherine McKie (who is known under your file WCM-63-53) that her brother James Cullen lived with her in Florida from July, 1922 until early 1924, and that he returned to Canada as the climate in Florida did not agree with him. It would appear that James Cullen left Canada for other than a temporary purpose and by so doing lost any status he had acquired. We have found no record of his subsequent landing and therefore it is deemed that he was not in possession of Canadian domicile on September 3, 1939 or January 1, 1947."

I have considered this question from the point of view of said deceased having domicile in Canada under the common law. There is no doubt that he was a British subject and although on his return from Florida in 1924 there is no record of his having been formally admitted for permanent residence,

nevertheless the fact that he has resided in Canada over all these years up to the date of his death, with the exception of a visit to the British Isles, I am of opinion that it should be held that he was a British subject domiciled in Canada and therefore would be entitled to claim for compensation under the Rules of the Commission.

As to the claim for personal injury, I regret to say that on the evidence a valid claim has not been established. If he was ruptured on the occasion of the disaster of the *Athenia*, there is no medical evidence to attribute his later ill health to that event. All the evidence on the record is largely hearsay and quite insufficient to establish a claim in that respect. According to such evidence as there is, at the time of the sinking of the *Athenia* he rowed the life boat which would not indicate that he suffered a hernia which is now claimed. After arriving home he went to work and apparently up to 1944 he was not in any way incapacitated. Many things may have occurred after 1944 which led to his ill health and subsequent death in 1951. As above stated, the evidence throughout is largely hearsay and quite insufficient to justify an award with respect to personal injury, and that part of the claim should be disallowed.

As to the claim for loss of personal property, in March 1948 deceased filed a claim for loss of property in the sum of \$639.07 on which he received from the British Ministry the sum of \$201.00 leaving a balance of \$438.07.

A list of the goods claimed for includes mostly personal clothing. The Rules of the Commission are to the effect that it is not the cost or replacement value which is the basis of valuation, but the reasonable market value. The total value, apart from the new goods which he bought in Scotland for the home trip, amounts to \$199.00. Applying the said Rule, there should be a discount or depreciation of at least 30%, leaving a balance of \$139.30. The alleged value of the new goods above mentioned was approximately \$105.00. From this there should be deducted at least 10%, leaving a balance of \$95.00, a total of \$294.00.

The said list also includes cash to the amount of \$335.00. The Rules also require that in the case of loss of cash, jewellery, etc., there must be corroboration. In this case, there is no such corroboration, but I would assume that he probably had at least \$75.00 for the expenses of his trip back to Canada. The total therefore for goods and cash comes to \$369.00.

In my opinion, therefore, there should be an award in favour of the Administratrix, Mrs. McKie, in the sum of \$369.00, together with simple interest at the rate of 3% per annum from 3rd September 1939, from which must be deducted the sum of \$201.00 above mentioned, and subject also to an adjustment of interest.

The claim for personal injury must be disallowed.

(Sgd) J. D. HYNDMAN
Deputy Commissioner

January 11, 1956.

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that the award should be increased, and particularly that an award for personal injury to the deceased James Cullen should be allowed.

I agree with the finding of the learned Deputy Commissioner to the effect that the evidence is insufficient to justify an inference that the subsequent incapacity and death of Mr. Cullen were the direct result of his experiences at the sinking of the *Athenia*. His incapacity apparently did not develop for approximately five years after the disaster, and very strong and convincing

evidence would be required to connect it with the claimant's experiences at the sinking of the *Athenia*. The suggested certificate from Dr. E. A. Floyd Day would not appear to fill this requirement, and I can therefore see no good purpose to be served by receiving it.

As to the requirement mentioned by the learned Deputy Commissioner to support evidence of the possession of cash in the sum of \$335.00, the present claimant states that there can be no corroboration because apparently the bulk of the money had been deposited with the purser and Mr. Cullen lost his wallet as well as his clothes. The policy of the Commission has been to recommend compensation to claimants for loss of cash only up to the amount of currency reasonably required for the completion of the passenger's journey. Beyond such amount, the Commission has interpreted the War Claims Rules to require that additional amounts of cash should have been protected by some such form of insurance as traveller's cheques, bank remittance, or letter of credit. In cases of passengers returning to Canada on the *Athenia*, I have regarded \$150 as a maximum amount of uninsured currency to be reasonably carried by a passenger. I think the allowance suggested by the Deputy Commissioner in this case might be increased from \$75 to \$150.

I agree with the learned Deputy Commissioner that, although Mr. Cullen did not repossess the statutory "Canadian domicile", which he had lost on his departure for Florida, the evidence clearly indicates that he had reacquired a common law domicile in Canada and that he was therefore, at the time of his loss, a Canadian within the meaning of qualification (vi) on page 24 of the Report of the Advisory Commission on War Claims.

The Canadian citizenship, and consequent eligibility of Mrs. McKie to claim as sole beneficiary under the will of the deceased Mr. Cullen have been established in connection with her own claim—*Case 1478*.

With the foregoing variation, I therefore recommend that the claimant Catherine McKie, as Executrix of the will of the late James Cullen, be paid for her own benefit as sole beneficiary under the will, the sum of \$444.00 as an award for loss of personal property by the late James Cullen at the sinking of the *S.S. Athenia*, such payment to be in order of Priority No. 3(a) and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$201.00 received from the Government of the United Kingdom, with interest adjustment from 7th May 1948.

Dated this 15th day of February A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1482

Re: *R. T. Sainthill & Son Ltd.*

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

I have also notified the claimant, in accordance with the provisions of Rule of Procedure No. 20, to the effect that I considered it necessary to increase the deduction made by the learned Deputy Commissioner on account of insurance deemed to have been carried on the M.V. "Mildred Pauline". The Deputy Commissioner's recommendation was that the ship should be deemed to have been insured for 50% of her computed market value at the time of her loss. My notice to the claimant was to the effect that the percentage of the presumed insurance should be increased to at least 75% of the market value.

Counsel for the claimant has submitted an elaborate argument to the effect that the amount of presumed insurance should not be increased, but that the 50% fixed by the Deputy Commissioner should be allowed to stand. The principal argument on which the claimant relies in this connection is that the ratio of 50% was fixed by the Deputy Commissioner on the ground of equitable considerations, including the fact that the sole owner of the Company at the time of the loss was financially unable to pay the premiums necessary for a larger percentage of insurance.

I am unable to agree with that contention. It is true that the Report of the Advisory Commission on War Claims (p. 67) recommends that "the claim should be reduced only by the amount of the insurance which they might reasonably have been expected to be able to obtain plus the estimated amount of the premium which the insurance would have cost". This recommendation must not, I think, be interpreted in the light of the claimant's subjective ability to obtain and pay for insurance, but must rather be construed in the light of the objective availability of insurance at the time concerned.

I have had the advantage of a conference with three of the Deputy Commissioners on the point involved, and we have unanimously reached the opinion that there should be a presumption of availability of at least 75% War Risk Insurance in relation to the market value of passenger or cargo vessels during World War II.

This opinion is supported by the Commission's experience in dealing with cases of the "Lady Drake" and the "Lady Hawkins", both of which were sunk by enemy action. The "Lady Drake" was insured in the sum of \$1,237,901.48 against a market value found by the Deputy Commissioner to have been \$1,500,000.00. The Deputy Commissioner found that the market value of the "Lady Hawkins" was \$1,500,000.00; she was not insured at the time of her loss, but the Deputy Commissioner deemed her to have been insured for the same amount as her sister ship, namely \$1,237,901.48, or a ratio of slightly over 80% to her computed market value.

In the present case, therefore, I see no alternative but to follow the general rule adopted by the Commission, and to hold that the claimant should have carried War Risk Insurance up to not less than 75% of the computed market value of the ship. Such insurance would amount to \$38,250.00, and I think the premium payable for that amount of insurance might reasonably be estimated at \$956.25. This would make a total deduction of \$39,206.25.

With the foregoing variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$11,793.75 as an award for loss of the M.V. "Mildred Pauline" by enemy gunfire, such payment to be in orders of Priority Nos. 3(a), 3(b), 4 (a), and 4(b), and to bear simple interest from 8th May 1942 at 3% per annum.

Dated this 7th day of June, A.D. 1957.

(Sgd) THANE A. CAMPBELL

Chief War Claims Commissioner

CASE No. 1483

Re: Sanguinetti

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

An interesting problem arises in this case as to the continuity of national status from time of loss until presentation of the claim. The late Mrs. Sanguinetti was a natural-born Canadian, and retained that status until her death on 21st February 1945. Her husband, the claimant, on the other hand, was not admitted to Canada for permanent residence until 5th April 1946, and did not become a Canadian citizen until 2nd March 1954. He first presented the present claim on 1st October 1953.

Technically, therefore, the claimant was not a Canadian citizen at the time of the initial presentation of his claim; and there was also a gap in the continuity of Canadian status from the date of his wife's death on 21st February 1945 until 5th April 1946, when he became a landed immigrant, and presumably acquired a common law domicile of choice in Canada.

After careful consideration of these two points, I have come to the conclusion that they should not preclude the eligibility of the present claimant. In my opinion, the Rule respecting continuity of national status was intended to preclude a person who loses or forfeits his Canadian national status between the time of loss and the time of presenting a claim. I think that, in the present case, the deceased wife's Canadian status would carry along the eligibility of the claim until the time of presentation; and that the husband's Canadian citizenship, though not consummated until 2nd March 1954, persisted in a nascent stage from the time when he would presumably have been entitled to a grant of citizenship, approximately in the year 1951. In several previous cases, I have held that such a nascent citizenship, arising before the date of presentation but consummated later, confers on a claimant Canadian national status at the time of presentation, within the intention of the War Claims Rules.

The estimate of value of the goods lost reached by the learned Deputy Commissioner seems, perhaps, rather high in view of the somewhat incomplete nature of the evidence submitted. On the other hand, the learned Deputy Commissioner reached his estimate after careful consideration on the basis of an oral hearing, and I am therefore not disposed to attempt to revise his opinion.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant Edmund N. H. Sanguinetti, as Executor of the Estate of the late Dorothy Ethel Madeline Sanguinetti, be paid \$4,930.55 as an award for loss of property at Hong Kong, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 20th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1486

Re: Whitehead

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report and, on review, have intimated that they were prepared to accept the award recommended by the learned Deputy Commissioner and that they did not intend to make any further representations.

This is one of a numerous and important group of claims in which several problems of difficulty have arisen relating to the effect of pre-war and wartime confiscations of property by German authorities in Germany and German-

occupied countries, and also relating to the effect of post-war measures of restoration and restitution in the same countries. Although not all such problems are involved in the present case, I consider it desirable to make here a comprehensive statement of the conclusions which I have reached as to the proper interpretation of the provisions of the War Claims Rules involved in the whole group of claims.

The problems to which I refer are so complicated and far-reaching that I considered it desirable to follow the recommendation of the Right Honourable Advisory Commissioner (Report, p. 92) by convening a series of meetings of the six Deputy Commissioners for the general consideration of the questions in issue.

After very careful deliberation, I have formulated the following principles of interpretation of the relevant provisions of the War Claims Rules, on the basis of the opinions reached by the learned Deputy Commissioners at the close of the meetings. I may say that the opinions of the Deputy Commissioners were unanimous on all points except one, to which I shall later refer in detail.

1. Re confiscation by German authorities as the basis of a compensable claim:
 - (a) Pre-war confiscation obviously cannot form the basis of a compensable claim, as it did not occur during World War II;
 - (b) Confiscation during World War II cannot form the basis of a compensable claim if it took place at a time when the owner was not a Canadian within the meaning of the Rules;
 - (c) Confiscation by civilian authorities, even if it took place during World War II and at a time when the owner was a Canadian, cannot form the basis of a compensable claim unless the confiscation was carried out by reason of the enemy character of the Canadian owner.
2. In order to establish a valid claim for loss of, or damage to, property by reason of an operation of war during World War II, the claimant must establish that he was the owner of the property at the time of the act causing the loss or damage.
3. Ownership of tangible assets at the relevant time must be determined according to the law of the country of their *situs* at the time of the war damage. A previous confiscatory measure must be considered valid if the confiscating authority was then recognized by Canada as the *de facto* government of the country of *situs*, whether it was the government *de jure* or not.
4. The War Claims Rules cannot be interpreted to permit the Commission, in determining the question of ownership of property at the time of war damage, to take into consideration the effect of post-war measures of restitution. In other words, the applicable law should be that of the country of *situs*, as recognized by Canada, at the time of the war damage.

On this last point, there was a dissenting opinion expressed by one of the learned Deputy Commissioners, and supported by the view of Mr. J. deC. Nicol, Senior Counsel for the Commission. I recognize considerable merit in the arguments expressed in favour of this minority view, but I have concluded that the majority opinion should prevail for the following, among other, reasons:

- (a) The post-war measures of restitution upon which numerous claimants rely are varied in their character and are usually based upon the performance of certain conditions or upon the happening of certain contingencies. Very few of such restitution measures have been car-

ried out effectively or unconditionally. This fact strongly derogates from the alleged retroactive nature of the measures concerned;

- (b) Recognition of such measures of restitution as having the effect of re-vesting ownership of properties at times which would include the dates of war damage would run counter to the equitable principle expounded in the War Claims Rules respecting compensation otherwise provided for. In other words, if the Commission were to give effect to measures of post-war restitution or restoration, the result would be the granting of compensation to claimants who had already received their properties back (albeit in a damaged condition), whereas at the same time compensation would be refused to claimants who had received no restitution or restoration of any kind.

It now becomes necessary to apply the relevant portions of the foregoing conclusions to the circumstances of the present claims.

As to the claims for losses occurring in Austria, the learned Deputy Commissioner has found that the properties concerned were confiscated by decrees of the German-controlled government of Austria, but that after the war they were re-transferred and restored to the claimants Frederick Whitehead and Mrs. Rosemary Huston.

The information available to the Commission indicates that Austria was completely absorbed in the German Reich and that Canada took action which was clearly intended to recognize, *de facto*, German sovereignty over that country. A decision was sought from the Governor General in Council authorizing action "to provide for the situation resulting from the actual absorption of Austria in the German Reich". The necessary administrative action was then taken. All existing treaty relations with Austria were regarded as being extinct and were replaced with the corresponding treaty relations with the German Reich. The then Prime Minister of Canada, the Right Honourable W. L. Mackenzie King, stated in the House of Commons on 27th March 1939, that there had been *de facto* recognition of German sovereignty over Austria.

It is therefore clear, on the basis of Item No. 3 in the above-noted formula of interpretation, that the pre-war confiscation of the claimants' properties in Austria must be considered valid, and that therefore the claimants were not the owners of those properties at the time of the war damage. It is also clear, on the basis of Item No. 4 in the formula, that the claimants' lack of ownership at the time of loss cannot be remedied by a measure of post-war restitution.

I therefore feel constrained to agree with the recommendation of the learned Deputy Commissioner that the claims for damage to property in Austria be disallowed.

The claims for damage to properties in Czechoslovakia present greater difficulty, but they also may be determined on the basis of the principles of interpretation at which I have arrived with the assistance of the learned Deputy Commissioners.

Materials available to the Commission indicate that at no time was any action taken by Canada, either expressly or impliedly, which could be regarded as constituting *de facto* recognition of the German authorities set up pursuant to the occupations of Czechoslovakia, Poland and Yugoslavia. More specifically, Canada did not at any time withdraw *de jure* recognition from the Czechoslovakian Government in exile, or take any action recognizing *de facto* the German authority in Czechoslovakia. On 19th December 1941, the Czechoslovakian Government issued a proclamation which invalidated transfers of public or private property effected on the territory of the Republic since 27th September 1938 "under the pressure of enemy occupation or also under exceptional political circumstances".

The conclusion therefore appears to be that at the time of the war damage to the claimants' properties in Czechoslovakia, Canada would not have recognized the previous confiscatory measures as valid, but would regard the claimants as continuing to be the lawful owners of the properties concerned.

For the foregoing reasons, I find myself in agreement with the opinion of the learned Deputy Commissioner that the claimants have established a valid claim for compensation in respect of the damage to their properties in Czechoslovakia. I have also carefully examined the estimates of damage assessed by the Deputy Commissioner, and I am of the opinion that they are reasonable and equitable in the circumstances of the case. I accordingly approve his recommendations without variation.

It will be seen that Deputy Commissioner Hyndman's decisions on the claims for damage to property, both in Austria and Czechoslovakia, anticipated and entirely corresponded with the principles of interpretation later formulated on the basis of the opinions expressed at the Deputy Commissioners' meetings.

I therefore recommend that there be paid to the claimants the following amounts as compensation for damage to properties in Czechoslovakia:

- (a) To Mrs. Elsie B. Whitehead, \$27,824.00, such payment to be in Orders of Priority Nos. 3(a) to 5 inclusive;
- (b) To Mrs. Rosemary Huston, \$37,098.00;
- (c) To Frederick Whitehead, \$37,098.00;

each of the two last payments to be in Orders of Priority Nos. 3(a) to 6(a) inclusive. Each of the foregoing payments should bear simple interest from 1st January 1946 at 3% per annum.

I recommend that the claims for damage to properties in Austria be disallowed.

Dated this 22nd day of August, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

At the time of my Report dated 22nd August 1958, the question of reimbursement of expenses was reserved for later consideration. In the interval, Dr. Samuel, representing the claimants, has appeared before me and made a submission respecting the appropriate amounts to be allowed.

After considering all angles of the case, I am of the opinion that the sum of \$624.00, divided in equal shares, would fairly reimburse the claimants for the amounts necessarily expended abroad in the preparation of their claims.

I therefore further recommend that the claimants be paid the following respective amounts as awards for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimants to establish their claims, such payments to be without interest, but not to be taken into account for priority purposes:

- | | |
|--------------------------------------|-----------|
| (a) to Mrs. Elsie B. Whitehead | \$ 208.00 |
| (b) to Frederick Whitehead | 208.00 |
| (c) to Mrs. Rosemary Huston | 208.00 |

Dated this 14th day of May, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Reference: No. 9798—Re Mahler-Aszkanazy (unreported).

CASE No. 1501

Re: Rogers

...The minor beneficiaries of the award in this case are five (5) and two (2) years of age respectively and are entitled to \$337.00 each. The question arises under Rule of Procedure 35, whether awards to these minors should be paid to their mother as natural guardian, or to another trustee. In normal circumstances, it would appear that the expenses involved in legal guardianship of all beneficiaries of awards under \$500.00 might be greater than are warranted by the risk of misapplication by a natural guardian. In this case, the individual awards to minors are each under \$500.00 and there is nothing on the record to indicate that the mother would not properly apply these awards for the benefit of her children.

I therefore add to the report of the Deputy Commissioner a recommendation that the sum of \$337.00 awarded to each of her minor children be paid to her as their natural guardian, but that the payments be expressed in each case to be in trust for Cheryl Darlene Rogers and Faith Jane Rogers, respectively....

Dated this 16th day of March, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1513

Re: Shaw

Deputy Commissioner Bird has submitted to me his findings and recommendation on the claims for loss of property presented by this claimant in her own right, and by the present claimant and other beneficiaries of the Estate of her husband, the late John Roy Shaw, for loss of property by the late Mr. Shaw. For purposes of convenience, I consider it desirable that my recommendation should be separated as to the two branches of the claim, and that the claim presented by Mrs. Shaw in her own right should be dealt with separately on review.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has acquiesced in the award of \$4,000.00 recommended by the learned Deputy Commissioner, subject to reservation of her claim to a portion of any award which may be made in respect of the property loss sustained by her late husband. The other beneficiaries of her husband's estate have waived any claim to a share of the \$4,000.00 award, and have consented that Mrs. Shaw should receive the total amount of that award.

A review of the evidence adduced respecting the ownership, identity, and value of the goods alleged to have been lost, as well as of the circumstances and causes of the alleged loss, lead me to the opinion that the established quantum of compensable loss is not so great as the amount recommended by the learned Deputy Commissioner for payment. On the other hand, the Deputy Commissioner arrived at his findings of ownership and loss as well as at his estimate of compensable value, after very careful consideration on the basis of protracted oral hearings. For that reason, I am disposed to accept his findings and to approve his recommendation for payment of an award of \$4,000.00.

As the Philippines War Damage Commission required an alien claimant to have been resident in the Philippines for a period of five years, and as Mrs. Shaw had not complied with that requirement, she would apparently not have been eligible to present a claim to the Philippines Commission.

Having reviewed this portion of the Deputy Commissioner's report, I approve it without variation.

I accordingly recommend that the claimant, Mrs. Alice Boyes Shaw, be paid \$4,000.00 as an award for loss of her separate property in the Philippines, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 16th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1609

Re: Calvin

Deputy Commissioner Hyndman has submitted his findings and recommendation on this claim for maltreatment of a prisoner of war in Europe, and his report now comes before me for review.

The Deputy Commissioner's hearing was conducted under the procedure in effect prior to the presentation of my Report on conditions prevailing generally among prisoners of war in Europe, and the lump sum award recommended by the Deputy Commissioner was \$400.00. Supplementary information has been furnished by the claimant, from which it is evident he is entitled to the general presumption of the fact of maltreatment, with consequent incapacity to work subsisting for some time after his liberation. The claimant was in custody for a total of 1011 days, being at the time of his capture a member of the Royal Regiment of Canada. After being forced to participate in the so-called Dieppe March, he was shackled for 120 days and upwards. He was transported by box-car on two occasions, one of which was apparently a continuation of the Dieppe March, and during this method of transportation he was apparently submitted to extremely severe conditions, particularly in view of the state of the wound which he had suffered. He was later forced to participate in a "hunger march" of early 1945 for a duration of about 62 days, after a preceding period of severe malnutrition. From the additional information now available, I find that the claimant was forced to work for a considerable period in coal mines, the work being excessively heavy, and rations and other conditions extremely unsatisfactory. In the claimant's state of health he appears to have been urgently in need of medical attention, which was not provided. It seems obvious that the conditions under which the claimant was forced to work had a good deal to do with his consequent pleurisy and tuberculosis.

On review, the claimant has suggested some special solatium for the period of four and one-half months of hospitalization and treatment following the cessation of hostilities. This item cannot in itself constitute maltreatment, but it is indirectly an indication of the severity of the conditions to which the claimant was subjected during the period of his wartime custody.

On a review of all the circumstances of this case, and with the aid of the new procedure which is now in effect, I have come to the conclusion that this claimant should be awarded \$551.80, for his maltreatment while a prisoner of war in Europe.

I therefore vary the Deputy Commissioner's report to that extent, and I recommend that the claimant be paid \$551.80 in order of Priority No. (1-2).

Dated this 20th day of November, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1625

Re: Copeman

Deputy Commissioner Hyndman has submitted to me his findings and recommendation with his reasons therefor.

On review, the claimant has made three principal submissions: (a) that the portion of the award allowed by the Deputy Commissioner for 122 days confinement in a Lazaret under inhumane conditions is not sufficient; (b) that the Deputy Commissioner has not allowed the claimant the normal minimum of \$200.00 in respect of awards for aggravating or unusual maltreatment; and (c) that the award does not take account of the claimant's loss of wages for two years following liberation.

I will deal with these contentions in the order named above:

(a) On careful examination of the conditions under which the claimant was confined in the Lazaret, and the apparent deleterious effect on the claimant's health and earning capacity, I am disposed to increase by \$90.00 the amount granted by the Deputy Commissioner for that phase of the claimant's maltreatment. It is noted that this claimant was liberated before the "hunger marches" and other severe incidents of maltreatment suffered by so many prisoners in the last few months of the war.

(b) Although the foregoing variation practically eliminates the force of the claimant's second contention, I should mention that the Deputy Commissioner quite properly regarded the normal minimum of \$200.00 as being applicable to the total amount of the award, and not to those portions which are specifically relative to aggravating and unusual incidents. It is true that the minimum becomes applicable only when aggravating or unusual incidents are established, but when the minimum is applicable it is computable with reference to the total amount of the award.

(c) Maltreatment awards are not in the nature of compensation for pecuniary loss, but are solely personal solatia. Civilian claimants may be granted awards for pecuniary loss arising from personal injuries caused by maltreatment, but such is not the case in claims by prisoners of war. Members of the Armed Services are compensated for such pecuniary losses by means of pensions and other such grants. This claimant is now receiving 100% war disability pension, and although it is altogether likely that his condition of pulmonary tuberculosis was a direct result of the atrocious conditions existing in the Lazaret where he was confined, this Commission has no jurisdiction to supplement his pension by an award for pecuniary loss on that account.

With the above mentioned variation, I approve the findings and recommendation of the Deputy Commissioner, and I recommend that the claimant be paid:

Award for maltreatment of himself, \$367.80, in order of Priority No. (1-2).

Dated this 8th day of December, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1685

Re: Flower

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

Counsel for the claimant urges that the principle laid down in *Fleming v. Markovich* (1942) 4 D.L.R. 287 should govern the duration of the period during which the claimant's loss by reason of the death of his wife should be measured.

I think a distinction might well be drawn between the facts of the Markovich case and the present, namely that the former concerned the death of a husband, upon whose earnings the wife had been dependent for her livelihood. The present case concerns the death of the wife, and the Deputy Commissioner has found that she did not have any earnings on which the husband was dependent.

Though expressing some measure of disagreement with the principle of the Markovich case, the learned Deputy Commissioner did allow to the claimant \$700.00 for expenses incurred following the death of his second wife. This must therefore be taken to be a finding of fact, and in the circumstances I do not think that it would be proper for me to disturb it.

Counsel for the claimant also submits that there should be deducted from the amount of loss sustained by the claimant through his wife's death, not the total value of her estate, but only the net individual share received by the claimant. Evidence is now produced which indicates that the net amount received by the claimant in his own right as his share in his wife's estate was \$1,147.30, the other two-thirds of the net estate going to their two sons. As the claimant's wife was apparently about a year younger than himself, there is no presumption that the claimant would ultimately have received any such share if the "Athenia" disaster had not occurred. I think, however, that the claimant's point is well taken, and that only the claimant's individual net share should be deducted from the amount of his established loss of about \$1,500.00. This would leave a balance of \$352.70, which should bear interest from a mesne date, say, 1st May 1941.

As to the claim for loss of property, though the Deputy Commissioner finds no details as to the various articles lost, I should be inclined to follow the decision in a number of previous cases to the effect that payments of \$402.00 by the Government of the United Kingdom, and \$50.00 by the Ocean Insurance Company are *prima facie* evidence of the loss of goods up to the total of those amounts. After deducting the insurance item, there would be an uninsured loss of about \$402.00.

With these variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

- (a) \$352.70 as an award for loss incurred by the death of his wife as a result of the sinking of the SS "Athenia", such payment to be in order of Priority No. (1-2), and to bear simple interest from 1st May 1941 at 3% per annum;
- (b) \$402.00 as an award for loss of personal property of his wife at the sinking of the SS "Athenia", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$402.00 paid by the Government of the United Kingdom, with interest adjustment from 14th February 1948.

Dated this 19th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1751

Re: LeBlanc

The claimant herein seeks an award for maltreatment alleged to have been suffered while interned by the Germans and also damages for loss of property.

I find from the evidence that, at all relevant times, the claimant was a Canadian Citizen, although he had lived in France since 1927 and had carried on the business of a Central Heating Contractor since 1933. On August 1, 1940, without any warning and without any time to deal with his business or personal affairs, he was arrested by two Gendarmes, taken to the local police headquarters and turned over to German authorities. He was detained by them in internment camps at St. Denis near Bordeaux and Drancy Camp until he was liberated on August 25th 1945. I cannot find in the evidence sufficient proof of the claimant's having been in the recognized criminally operated concentration camps to place him in the category of being entitled to an automatic award of compensation. It, therefore, becomes necessary to examine the record for actual proof of compensable maltreatment. The claimant states that he was not tortured by prison authorities but complains bitterly about the insufficiency and kind of food which he received. Doubtless, for a time the food was not at all satisfactory, but at times food was received from outside and conditions improved as Red Cross parcels were received more regularly. However, although he claims to have been weak and depressed upon liberation, he never had any medical treatment or examination after leaving camp. For an active man to be cooped up in an internment camp for a period of five years in enemy hands doubtless would have some effect on the claimant, but the internment was not illegal and affords no ground for compensation in itself. The only medical evidence in the record—a certificate of Dr. J. Euclide Léger—given in December 7th last is far from sufficient as a basis for a claim for maltreatment. I do not think the claimant can succeed in his claim for maltreatment.

As to the claim for loss of property, the evidence establishes that the claimant lived in a rented property but owned his own furniture and some fixtures. He also operated a business of central heating contracting. In this he is corroborated by two apparently reputable citizens, the manager of the French National Railways living at Bordeaux, and a retired member of the Postal Service, whose notarial certificate is in the record. I examined the claimant carefully respecting the items of property set out in his filed claim and I am satisfied that his claim of \$3,000.00 is not excessive.

The claimant is not in a position to state exactly how his property disappeared following his imprisonment, but France was overrun by the Germans and Bordeaux was a German Submarine Base. It, therefore, seems proper to hold that the claim is one which comes within the provisions of the rule relating to the disappearance of tangible things set out on page 57 of the Report of the Advisory Commission.

The claimant made no formal application to the French government for compensation but states that he contacted the French authorities and was told that it was a German affair and there was nothing that they could do. However, on December 30, 1947 he received a letter from the French Embassy requiring him to file his claim before December 30th, and he states that he received no notice of any extension of time and felt it was then too late to file claim. In view of this evidence, which I accept, I do not think the claimant's failure to file claim with the French Government should now preclude him from recovering under The War Claims Rules.

My recommendation is that the claimant be paid the sum of \$3000.00 together with simple interest thereon at three per cent per annum from the first day of January A. D. 1946, as compensation for loss of property suffered by him.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

Charlottetown,
April 21, 1954.

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

After the decision of the learned Deputy Commissioner, the Commission investigated further the evidence which was given in very general terms to the effect that the claimant's movables were sequestered and sold. Pursuant to the inquiry, information was received to the effect that Mr. LeBlanc had blamed his landlord for having sold at least a part of his goods, including furniture, carriage, and equipment. Unfortunately, the original claimant, Mr. LeBlanc, died in June 1954, and it has therefore been impossible to check this information with him.

Pursuant to the provisions of Rule of Procedure No. 20, I conveyed to the present claimant an indirect written notice and a direct verbal notice of my opinion that the information received subsequently to the hearing would oblige me to reverse the decision of the Deputy Commissioner, and to recommend disallowance of the claim. It is clear that a sale of Mr. LeBlanc's goods, by his former landlord, even though fraudulent, and a subsequent failure to account for the proceeds, would not be a valid ground of compensation under the War Claims Rules.

The present claimant subsequently appeared before me at Moncton, and as a result of the submissions then made I am of the opinion that the information to which I have referred is perhaps too vague to warrant a reversal of the Deputy Commissioner's findings *in toto*. It may very well be that a portion of Mr. LeBlanc's goods were sold by the landlord, and that the balance were confiscated by the Germans or looted in an enemy-occupied territory. In a number of similar cases, where there is some evidence to warrant a finding that some of the goods had disappeared through an operation of war, and some had disappeared through a process which would not render the loss compensable, the Commission has divided the loss into a compensable portion and a non-compensable portion. I think the present case is one in which such an apportionment would be appropriate. In the absence of any available evidence which might enable the Commission to make an accurate calculation of such an apportionment, I would estimate at 50%, or \$1,500.00, the value of the goods presumably sold by the landlord and I would approve to the extent of \$1,500.00 the finding of the Deputy Commissioner that the loss of the property was due to an operation of war.

From the findings of the Deputy Commissioner, it would appear that Mr. LeBlanc made a reasonable effort to prosecute a claim against the French authorities, and failed to do so owing to inaccurate or incomplete information which he received. I think, therefore, that this is one of the few cases in which a claimant may be excused for failure to prosecute a claim against an alternative source of compensation.

Following the death of Mr. LeBlanc in June 1954, the claimant Percy C. Brian was appointed Administrator of his estate by the Probate Court of the County of Westmorland, in the Province of New Brunswick.

It appears that the beneficiaries of the estate are Mr. LeBlanc's widow Odette Jeanne LeBlanc, his daughter Anne Marie LeBlanc, and his son Jean Norman LeBlanc. It is unnecessary to investigate the national status of the beneficiaries, as the claim was instituted by Mr. LeBlanc in his lifetime, and he has been found to have had Canadian status at all relevant times. According to the Intestacy Laws of New Brunswick, the widow is beneficially entitled to one-third of the estate, including the present award, whereas the son and daughter would divide the remaining two-thirds in equal shares. I am, however, informed that Jean Norman LeBlanc has executed a release of his share of his father's estate to the widow.

It is noted that the late Mr. LeBlanc is indebted to the Government of Canada in the sum of \$400.00 re advances for subsistence and transportation expenses during World War II. It is also noted that his daughter Anne Marie LeBlanc and her mother Zélie Madeleine LeBlanc (the divorced wife of the late Mr. LeBlanc) are similarly indebted to the Government of Canada in the sum of \$1,786.14. Though this Commission has no jurisdiction to adjudicate the merits of such indebtedness, I presume that the amount owing by the late Mr. LeBlanc would be a first charge on the presently recommended award as a whole, whereas the amount owing by his daughter would be a charge upon her residual share only.

In all the circumstances, I am of the opinion that the amount of the award, after deduction of the appropriate indebtedness to the Government of Canada, may properly be paid to the Administrator for distribution among the beneficiaries in accordance with the laws of New Brunswick.

With the foregoing variations, I approve *pro tanto* the report of the Deputy Commissioner, and I recommend that the claimant, as Administrator, be paid the sum of \$1,500.00 as an award for loss of property by the late Urbain Joseph Felix LeBlanc, in France, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 17th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1762

Re: Oppen

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant, whose correct maiden name was Hermena Jean Phemister, has been furnished with a copy of the Deputy Commissioner's report, and on review, has presented detailed materials and argument in support of the contention that her award for property loss should be increased.

The Deputy Commissioner's award was made after careful consideration of the evidence adduced at an oral hearing, and I am therefore not in a position to conduct a detailed review of his findings of fact. Even if such a review were to result in some upward revision of values, that benefit might very well be compensated by a revision of the apportionment of household property as between the claimant and her husband. The latter, not being a Canadian at the time of the loss, is not eligible to claim, and it is clear that the Deputy Commissioner, to use his own words, made the apportionment from the point of view most favourable to the claimant.

There are, however, certain respects in which a recalculation of the formulae employed by the Deputy Commissioner would be of some slight benefit to the claimant, to the extent of \$32.45.

There is one other respect in which I think the claimant is entitled to consideration. The Deputy Commissioner reached the amount of his award in part, at least, by percentages calculated on estimated costs and values submitted by the claimant. Many of those estimates were based on prices prevailing at the date of her marriage on 31st August 1940. Though the increase of prevailing prices in Hong Kong in the next ten months cannot be measured by any exact formula such as the addition of a special Canadian Excise Tax, there notoriously was a general rise in prices during that period, and I think the claimant should have a nominal benefit of the increase.

In other words, though a victim of the Japanese War cannot obtain the advantage of an appreciation of values arising from the war with Japan, he may, under the Rules, have the full benefit of an advance in prices up to 30th June 1941, whether due to the war with Germany or to other factors.

Owing to the complexity of the factors involved, any amount allowed must be nominal and arbitrary. It would further be subject to deduction of 25% on "communal" items, and of 40% on "personal" items. I would recommend a net addition of \$135.00 as a nominal compensation for advance in market prices (up to 30th June 1941) of items whose value has been directly or indirectly based on August 1940 prices.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

(1) As an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, \$603.00, in order of priority No. (1-2).

(2) As an award for loss of personal property, in order of priority No. 3(a), \$1743.45, with simple interest from 1st January 1946 at 3% per annum.

Dated this 24th day of June A.D. 1954.

(Sgd) THANE A. CAMPBELL

Chief War Claims Commissioner

CASE No. 1834

Re: Benoist

Deputy Commissioner Marion has submitted to me his findings and recommendation with his reasons therefor.

Having reviewed the report of the Deputy Commissioner, I approve, for the reasons set forth in the report, his findings that the claimant's alleged loss cannot constitute a valid claim against the War Claims Fund.

I may say that I have reached this conclusion with very great reluctance, as the evidence indicates that this claimant suffered a real and genuine loss by reason of the existence of a state of war. Assuming, however, that his loss might constitute an admissible claim under the War Claims Rules, it would be in the nature of a "money claim", and its valuation would follow the principles set forth on pp. 72 and 73 of the Report of the Advisory Commissioner. In other words, money claims are subject to the assumption that the money or the right to the money would have been available to the Canadian owner at the end of the war, and that the owner's true loss was a loss after the termination of hostilities of a sum of money expressed in what was the local currency of the country at that time. Owing to the intervening economic and financial disruption, the Advisory Commissioner recommends that in the conversion of money claims arising from loss of rights to currencies, the rates of exchange on December 30, 1949 be applied.

On the basis of exchange rights prevailing on the last mentioned date, the claimant's deposit of \$20,831.50 in Shanghai dollars would be worth approxi-

mately \$1.00 Canadian. Apart from the futility of making an award of such an amount, it appears that the claimant has already been offered a "settlement" which would have yielded him slightly more than the sum which I have mentioned. Whether or not that settlement is still available, its offer would constitute satisfaction otherwise provided. It must, however, be remembered that the loss of the claimant directly traceable to the war with Japan is not so great as might *prima facie* appear. The value of his deposit in Canadian currency at June 30, 1941 had already depreciated to about \$1,200.00, and was probably considerably less than that by the time of the actual outbreak of war on December 7, 1941.

It is however with reluctance, that I recommend the disallowance of this claim.

Dated this 24th day of November, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1845

Re: Large

On 24th June 1954 Deputy Commissioner Bird submitted to me an elaborate report, setting forth his findings on these claims, his recommendation, and his reasons therefor.

On 28th February 1955 I made an Interim Recommendation for a payment to the claimant of certain of the amounts recommended by the learned Deputy Commissioner, reserving for further consideration two questions, namely: (1) the competence of the claimant's son, Clifton T. Large, to renounce his share of the claims to his mother, and (2) the question of deducting, from the death claim, the present value of acceleration of benefits received by the claimant from the estate of her late husband. The terms of my Interim Recommendation may be taken as notice to the claimant, under the provisions of Rule of Procedure No. 20, that the remaining awards recommended by the Deputy Commissioner might be subject to downward revision upon consideration of the points reserved.

In view of the complexity of the situation, it is necessary to break down the awards as computed and recommended by the learned Deputy Commissioner, and I think the present standing of the claims will be clearly presented by the following tabulated summary. The breakdown of the Deputy Commissioner's recommendations will appear in the first column; the portions of the awards dealt with by my Interim Recommendation will appear in the second column; and the items of the awards which remain outstanding for present consideration will appear in the third column.

<i>Awards recommended by Deputy Commissioner</i>	<i>Capital Payments made by Interim Recommendation</i>	<i>Portions of Recommended Capital Awards outstanding</i>
Maltreatment of claimant\$ 1,344.00	\$ 1,344.00	
Maltreatment of husband 1,344.00	672.00	\$ 672.00
Personal injury to husband 4,942.21		4,942.21
Death of husband 1,107.50		1,107.50
Personal property of claimant 1,993.50	1,993.50	
Personal property of husband 6,714.21		6,714.21
<hr/> \$ 17,445.42	<hr/> \$ 4,009.50	<hr/> \$ 13,435.92

It is now admitted that the claimant's son, Clifton T. Large, has never had Canadian status. He is therefore neither eligible to prosecute a claim himself, nor can he assign to his mother a claim which he is not eligible to receive in his own right.

I understand that by the provisions of the "Administration Act", Chapter 6 of the R.S.B.C. 1948, Sections 111 (1) and 112, if an intestate dies leaving a widow and one child, one-half of his estate goes to the widow and the remaining one-half to the child. There must therefore be disallowed the following portions of the outstanding awards, which would go to Clifton T. Large if he were eligible to claim:

1/2 award recommended for maltreatment of Henry Milford Large	\$ 672.00
1/2 award recommended for personal injury to Henry Milford Large	2,471.10
1/2 award recommended for personal property of Henry Milford Large	3,357.10

As to the award recommended as compensation for the death of Henry Milford Large, I take it from the learned Deputy Commissioner's findings that this award was intended for the benefit of the claimant alone in her own right. Such an award would, however, be normally subject to deduction of the acceleration of benefits received by the claimant on the death of her husband. The benefits so received by the claimant in this case would presumably include: (a) one-half the assets of Mr. Large's estate, H. K. \$1,561.41; (b) one-half the award recommended by the Deputy Commissioner for personal injury to Mr. Large, \$2,471.11; (c) one-half the award recommended by the Deputy Commissioner as compensation for personal property of the late Mr. Large, \$3,357.10. The valuation of the acceleration of these amounts would be the difference between their total at the end of the deceased's expectancy of life (found by the Deputy Commissioner to have been 11.72 years) and their present value at the time of his death. Since the value of the benefit of such acceleration would not be substantial, I am inclined to the view that in this case it might be taken to off-set the possible earnings of the claimant beyond the age of 65, which the learned Deputy Commissioner disallowed by reason of remoteness of probability. On that basis, the amount recommended by the Deputy Commissioner for the death claim would not be disturbed.

With the foregoing variations, and with readjustment of the method of computation of interest, I approve the report of the Deputy Commissioner, and I accordingly recommend that the claimant be paid (in addition to the amounts already recommended by my report of 28th February 1955):

- (a) (in her own right) \$1,107.50 as an award of compensation for pecuniary loss resulting from the death of her husband, the late Henry Milford Large, such payment to be in order of Priority No. (1-2), and to bear simple interest from an estimated mesne date of 16th August 1947 at 3% per annum;
- (b) as Administratrix of the Estate of the late Henry Milford Large, \$2,471.11 for the benefit of the claimant in her own right as her share of an award for personal injury sustained by the late Henry Milford Large as the result of maltreatment whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2), and to bear simple interest from an estimated mesne date of 26th June 1946 at 3% per annum;
- (c) as Administratrix of the Estate of the late Henry Milford Large, \$3,357.11 for the benefit of the claimant in her own right as her share of an award for loss of property by the said Henry Milford Large in

Hong Kong, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 18th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Since making my Report dated 18th November 1955 on the above noted claim for the death of the late Henry Milford Large I have had the opportunity of further reviewing this claim in conjunction with a number of somewhat similar claims.

I have reached the conclusion that in the present case there is evidence that the death of the deceased caused a general dislocation of arrangements in the family to which the deceased belonged. As a consequence there appears to have been a resulting pecuniary loss in addition to that for which specific compensation has been awarded pursuant to my previous Report. It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the additional amount of \$2,000.00.

I therefore recommend that there be paid the following amount as an award for pecuniary loss resulting from the death of the late Henry Milford Large in addition to the amount recommended by my Report of 18th November 1955:

to Mrs. Fanny Lefroy Large \$2,000.00, such payment to be in order of Priority No. (1-2) and to bear simple interest from 16th August 1947 at 3% per annum.

Dated this 8th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1895

Re: Birch

....The claimant has also been notified, under the provisions of Rule of Procedure No. 20, that the Commission must deduct, from the medical and hospital expenses claimed, those items which represented payments defrayed by the British Columbia Health Insurance Scheme. Though such payments may be credited to an insured party for certain purposes, such as income tax deductions, they are clearly not compensable under the War Claims Rules.

....I am inclined to agree with the Deputy Commissioner that the malnutrition and undue stress imposed on the claimant during internment were contributing factors to his later illness and consequent pecuniary loss. The existence of a predisposition on the part of the claimant would not, I think, detract from the compensability of the maltreatment factor; this must be assessed subjectively as well as objectively, and the aggravation of an existing predisposition is properly regarded as a compensable factor.....

Dated this 31st day of May, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1916

Re: Poole

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, except in the following respects.

The claimant admitted having received compensation from the Malayan War Damage Commission in the sum of \$1,039.00 (Straits). He apparently overlooked the fact that, although an award of \$1,039.00 (Straits) was made for the loss of his property, final settlement of the award was made on the basis of 90.4%. This means that the actual payments received by the claimant totalled \$939.26 (Straits). At the dates of payment this amounted to the equivalent of Canadian \$308.53. The estimated mesne date of the receipt of payments by the claimant was approximately 1st November 1952.

The recommendation of the learned Deputy Commissioner should also be amended so as to allow the claimant interest on the total award from 1st January 1946 until the receipt of the Malayan payments.

I therefore recommend that the claimant be paid \$1,000.00 as an award for loss of property at Johore, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 4% per annum; subject to deduction of \$308.53 received from the Malayan War Damage Commission, with interest adjustment from an estimated mesne date of 1st November 1952.

Dated this 7th day of June, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1929

Re: Drapeau

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has presented, on review, further arguments in support of the contention that the amount of his award should be increased. His argument that prisoners of war in Germany should receive \$1.00 per day for the period of their captivity is, of course, irrelevant, owing to the findings of the Advisory Commissioner on War Claims, and to the conclusions of my general Report on the Reference under P.C. (1953) 857. The claimant's reference to his punishment after escape in November 1942 is more pertinent. The claimant deposes that, after twenty-one days' confinement with barely enough food to keep him alive, he was transferred to Ilag VIII-H and subsequently to Ilag VIII-Z, to which he refers as a concentration camp. In these camps he was imprisoned for eighteen months, and states that he was roped several times, kicked and beaten, compelled to work with extremely inadequate food, and that when he had finished his sentence his weight was reduced to 65 pounds. There is no direct corroboration of these statements, and his records indicate that at the time of discharge he stated that there were no disabilities he knew about, but he would

like a complete check-up, which apparently revealed a condition of gastric neurosis and dental deterioration.

Our general evidence regarding conditions in Ilag VIII-H and Ilag VIII-Z shows that the Y.M.C.A. did very valuable work in these camps, and that substantial results were achieved by way of providing religious services, sports, entertainment, and opportunities for study and cultural development. The reports of the Y.M.C.A. Welfare Officers indicate, however, that living conditions in those camps were substandard, one of the principal handicaps being overcrowding and limited space for movement and exercise. In one such report, I find the following observation: "It is however clear that their health must gradually grow worse." A condition of that kind must have led to a feeling of inevitable despair among the internees and, when combined with the special privations and punishments to which the claimant alleges he was subjected, goes to corroborate to some extent his statement that his weight and physique were very greatly deteriorated at the time he was returned to Marlag Und Milag Nord. In the context of over four years' imprisonment, such hardships would naturally have an unusually severe effect.

In all the circumstances of this case, I would increase the recommended award by \$75.00.

With that variation, I approve the Deputy Commissioner's report, and I accordingly recommend that the claimant be paid \$450.60 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 25th day of February, A.D. 1954

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1936

Re: *Mulvany*

...In the complicated circumstances of the case, it is indeed difficult to set up any arithmetical formula which would accurately represent the pecuniary loss which the claimant has suffered by reason of *personal injury* as aggravated or accelerated by maltreatment. It is consequently necessary for me to place myself in the position of a jury and, viewing all the factors of the case, I would estimate the compensable pecuniary loss from personal injury (including disbursements and prospective loss of earnings) in the sum of \$6,600.00 capitalized at the date of her liberation from internment, namely 5th September 1945.

Since at least a substantial portion, and probably the greater part, of the award to be recommended will be related to the future period of the claimant's life, I consider that approximately \$7,000.00 of the proceeds of the award should be in the form of a principal-consuming annuity for her benefit. As I have already intimated, the claimant could by a simple inquiry have learned of the availability of an award from the Malayan War Damage Claims Commission, and by reasonable prosecution of a claim against that source she could have secured a partial compensation for her *property loss*. In such circumstances, the War Claims Rules require that the claimant shall be deemed to have received from that source the amount of compensation which

would have been available by prosecution of a claim with reasonable diligence. From materials available in a number of similar cases, I would estimate the amount of such alternative compensation at \$300.00 and the mesne date of payment at 10th April 1954....

Dated this 19th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1985

Re: Roach

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

I have entertained very considerable doubts as to the Canadian status of this claimant at the time of her internment. She was born at Shanghai on 26th October 1933. She resided in China from 1933 to 1937, in Japan from 1937 to 1939, and in South Africa from 1939 to 1941. In 1941 she returned to China on a visit; she was placed under house arrest by the Japanese on 18th March 1942, and was transferred to a concentration camp exactly one year later. She arrived in Canada for permanent residence on 15th November 1947.

The claimant's father, Robert T. J. Roach, is a natural-born Canadian citizen, although he was not born in Canada. His father, Cornelius Edwin Roach, was born in Toronto; Robert T. J. Roach did not become an alien, though he resided in the Far East and in South Africa until 15th November 1947, when he arrived in Canada for permanent residence. The claimant's mother was born in Russia, but became a British subject through marriage; as she was not admitted to Canada for permanent residence until 26th June 1948, she was not deemed to have possessed Canadian domicile at the time of her daughter's internment.

After a very exhaustive consideration of all the circumstances of this case, I was inclined to the opinion that the claimant did not, at the time of her internment, possess Canadian domicile within the qualifications laid down by the Advisory Commission on War Claims. At a later stage of my review, however, the claimant has submitted to me her Certificate of Canadian Citizenship, No. 448 M, granted by the Secretary of State on 19th July 1948, from the endorsement on which it appears that the claimant was regarded by the Department of Citizenship and Immigration as being a natural-born Canadian citizen. From lengthy correspondence which I have had with the Department, it appears that the Department is convinced of the correctness of that qualification. In order to avoid the making of a ruling which might be inconsistent with prior rulings of the Department of Citizenship and Immigration, I feel bound to accept as conclusive the decision of the Department that the claimant was a natural-born Canadian citizen. In such cases, I have regarded natural-born citizenship to be retroactive in its effect to the extent of superseding the qualifications set forth on p. 24 of the Report of the Advisory Commission.

On the foregoing basis, the claimant would qualify from the point of view of Canadian national status both at the time of her internment and at the time of presenting the claim.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$882.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 8th day of June, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 1993

Re: Cleveland

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

This is the first claim, coming before me for review, in a group of cases in which the widow of a deceased internee has re-married before the making of a recommendation on a claim for maltreatment of her deceased husband. I therefore consider it desirable to set forth in some detail the method which I consider appropriate to determine the survival and apportionment of awards made in cases of this kind.

The survival of an award in case of the death of the person maltreated is to be determined on the principles laid down on p. 55 of the Report of the Advisory Commissioner on War Claims. It is there laid down that such awards should survive, but since they are compensation for something other than pecuniary loss they survive, if at all, not for the benefit of estates but for the benefit of a specific group of "dependents" as defined by an enumeration which also serves to fix their relative priorities. The widow or child of the deceased is deemed to be his "dependent" without any proof of factual dependency. The husband or parent of the deceased must establish factual dependency. A widow, however, ceases upon re-marriage to be the widow of her former husband, and if she is re-married before presentation or adjudication of her claim, she is no longer a qualified dependent. It therefore becomes necessary to determine whether it is sufficient for her to establish a presumed dependency at the time of her former husband's death or whether she must continue to maintain her status of dependency until the time of having her claim presented and determined. Many arguments could be advanced in favour of a decision on either side of that question. From the point of view of the nature of an award of this kind, as a highly personal solatium, as well as from that of the practical interest of the family (especially the minor child) of the deceased, I incline to the opinion that the status or fact of dependency was intended to continue until the making of an award.

On the other side of the question, there is the impressive argument that, but for delays in adjudication, widows in the position of the present claimant could have presented and established their claims immediately after the death of their husbands. Against that argument there is the emphatic principle that maltreatment awards give rise to no legal right of action, nor do they in any way constitute a vested right. Each award is a highly personal solatium to the person maltreated, and one would expect that its survival would be interpreted in a highly personal manner. From the practical point of view, I do not think such solatium could be best effected by allowing the widow to carry one-half the award into a subsequent marriage or marriages, to the possible detriment of the minor child who survived the maltreated person. I should make it clear that the last foregoing remarks have no specific application to this case, since the present claimant has expressed herself as being reasonably satisfied with

the Deputy Commissioner's award. I therefore develop here the applicable principle only because this happens to be the first case of this class under review.

After full consideration of arguments advanced on both sides of the question I have reached the conclusion that, in order to achieve practical equity, a decision should be reached which would give effect to both lines of argument. In other words, the re-married widow, though not entitled to any vested right in her share of the award, should receive some consideration for the period elapsing between the date of her deceased husband's liberation (in case he died after liberation) or death (in case he died during internment) and her own subsequent re-marriage.

Such a solution may properly be achieved by the adoption of a formula such as the Deputy Commissioner used in making his recommendation. The assumption that each widow, in this class of cases, had at the time of her deceased husband's liberation or death a life expectancy of 20 years, would probably give her some slight advantage over the consideration which she would receive if her life expectancy were actually calculated in each individual case. From the point of view of actual dependency as a widow, she would then be entitled to 5% of her one-half share of the award (or, in a case where there are no surviving children, 5% of the whole award) for each year or fraction of year elapsed from the date of her husband's liberation or death until her re-marriage. The children (or other surviving "dependents") would, of course, be entitled to the remainder of the full award, after subtraction of the percentage amount allocated to the re-married widow.

To apply this formula to the facts of the present case, we arrive at the resulting distribution of award recommended by the Deputy Commissioner. I accordingly approve, without variation, his findings and recommendation and I recommend that the claimant be paid:

Award for maltreatment of the late Private Ivan Emerson Willey, \$282.00, in order of Priority No. (1-2) and in the following shares:

- | | |
|--|-----------|
| (a) to Mrs. Aleta M. Cleveland | \$ 28.20 |
| (b) to "Mrs. Aleta M. Cleveland in trust for Harold Ivan Willey" | \$ 253.80 |

Dated this 19th day of November, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2017

Re: Crowley

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

This is one of the group of cases in which the claimants, who lost personal belongings on the occasion of the sinking of the S.S. "Athenia", did not claim or receive the ex gratia award which the majority of claimants received, in similar circumstances, from the Government of the United Kingdom. Owing to the fact that the United Kingdom awards were available nine or ten years after the losses complained of, it would appear prima facie that this group of claimants had failed to receive the ex gratia awards by reason of their own

neglect or default, or had lost their eligibility to receive payments thereof by reason of delay or neglect. The War Claims Rules provide (Report of Advisory Commission, p. 16) that in such a case a claimant shall be deemed to have received payment of the alternative compensation to which he would have been entitled had he exercised due diligence. On such a conclusion, this Commission would have no alternative but to deduct from each claimant's award the amount which he or she would probably have obtained from the Government of the United Kingdom by due diligence in the making of a claim for the *ex gratia* award.

I must confess that this point has given me a great deal of perplexity for a period of nearly a year. This is the third formal draft which I have made of an opinion, and each successive opinion reversed my former view. I am now convinced, however, that the decision which I have finally reached is the proper one, both in point of fact and in point of law or equity. Incidentally, my present opinion agrees with that of at least three Deputy Commissioners who have dealt with claims involving this point.

With a view to deciding this question in all fairness, I have made exhaustive inquiries into the method followed in the receiving and disposition of claims for the United Kingdom award to those who lost goods at the sinking of the "Athenia". Those inquiries definitely establish that at no time were all the surviving passengers, or the representatives of the deceased passengers, individually notified as to the availability of such an award, either by the Government of the United Kingdom, or by the Steamship Company, or by a Department of the Government of Canada. About 1st November 1948, an advertisement was published by the Honourable, the Secretary of State of Canada, generally notifying the public that claims for loss or damage arising directly from operations of war during the Second World War might be filed with the War Claims Branch on or before 31st January 1949. Those persons who did file notices of claims with the War Claims Branch before 30th June 1949 were sent a circular letter of information concerning the availability of the *ex gratia* payments by the United Kingdom authorities, and this letter contained instructions for the prosecution of claims for such payments.

It is noted that the advertisement published by the Honourable, the Secretary of State, was permissive, and did not purport to give notice of an established deadline beyond which claims could not be received. It is also noted that the Government of the United Kingdom apparently did not fix in advance any date after which it would decline to accept claims, but merely discontinued the acceptance and payment of claims received after 30th June, 1949.

The learned Deputy Commissioner has found that the claimant did not receive the United Kingdom award, because she was, in fact, wholly unaware of the possibility of obtaining it until the time for filing claims had elapsed. He is of the opinion that the circumstances are such that the claimant ought not to be deprived of compensation under the War Claims Rules because of her failure to obtain an alternative compensation of whose existence she did not know.

In view of the exceptionally vague manner in which the existence and availability of the United Kingdom award was brought to the attention of potential claimants, I am inclined to the view that there is considerable merit in the Deputy Commissioner's contention. I further believe that the claimant's factual ignorance of the existence of such an award is validated from the legal and equitable point of view by the following considerations. There was no pre-published deadline for reception and payment of claims for the United Kingdom award. Apart from a few investigations privately conducted on the part of a few potential claimants, the only avenue of information was the filing of a claim pursuant to the Secretary of State's advertisement of November

1948. The filing of such claims was permissive, and not mandatory, and whatever validity the suggested date of 31st January 1949 may then have had, the validity of that date has by successive regulations been extended to a final deadline of 30th November 1954. In other words, a person who has given to this Commission a notice of his claim in November 1954 is in just as good a position under the War Claims Rules as one who filed a claim with the War Claims Branch in January 1949. Such being the case, it would, I think, be anomalous to hold that the November 1954 claimant is to be prejudiced by not having received information which he would accidentally have got if he had filed a claim within the permissive period ending in January 1949.

Though it does seem strange that a claimant may in 1953 or 1954 file a claim for loss occurring in 1939, without having made any intervening inquiries which would have led to the discovery of the United Kingdom award, it seems to me that the successive extensions of the deadline for filing claims were intended to give potential claimants a renewed equality of opportunity. If there had been a published deadline for the United Kingdom award, or if that award had been specifically referred to in the Secretary of State's notice, or if the filing date mentioned in that notice had been imperative or final, the situation would have been different.

I have therefore reached the opinion that an equitable interpretation of the successive extensions of filing deadline, combined with actual and bona fide lack of knowledge on the part of the claimant of the availability of the United Kingdom award, relieves the claimant of the implied receipt of the benefits to which she would have been entitled from that fund.

Having reviewed the report of the Deputy Commissioner, I approve it without variation, and recommend that the claimant be paid \$1,000.00 as compensation for loss of property at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 19th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2065

Re: Pearson

On 9th February 1954 I recommended payment to this claimant of \$473.20 as an award for maltreatment whilst a prisoner of war in Europe.

The claimant has now appeared before me in person and has requested a further review of his claim. He has furnished additional detailed information regarding the incidents of maltreatment to which he was subjected during internment.

It appears that the claimant was serving on HMS "*Voltaire*", a ship of the British Navy, which was torpedoed and sunk by a German Pocket Battleship. He was taken prisoner and removed to Germany, where he was interned for 1396 days.

At the time of his capture he sustained a scalp wound, which resulted in headaches, dizzy spells and epileptiform attacks, and a partial amnesia, continuing after his liberation. As mentioned in my previous report, he claims that he became so weakened and debilitated that his weight was reduced to 98 pounds.

Despite these conditions resulting from his wound, the claimant was forced to go to work. He states that he was kicked and forced to work when he was

completely unable to do so. On one such occasion, he was beaten with a rifle, which broke his wrist and cracked a rib. He was nevertheless forced to resume work the next day without any adequate medical attention. His wrist was very painful for a long period, and still bothers him when he attempts to lift anything.

On another occasion, the claimant states that he was "strung up" by wire wound around his fingers and beaten. This apparently caused severe pain and injury to his fingers, which has only very gradually disappeared. On another occasion, he was prodded with a bayonet while unconscious, and his hand still bears the resulting scar.

The claimant appears to be a reliable person and, in the context of his exceptionally long period of internment, and of the physical condition in which he found himself by reason of his wounds and lack of medical attention, the treatment accorded to him would appear to have been characterized by unusual severity and brutality. I consider that he is entitled to a further award, in addition to that recommended by my report of 9th February 1954.

On further review, I therefore recommend that the claimant be paid \$200.00 as an additional award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 19th day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2084

Re: Borthwick

Deputy Commissioner Hyndman has submitted to me his findings and recommendation with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I note, however, that the Deputy Commissioner has deducted from the award in favour of the Estate of Robert Howe the full *ex gratia* payment of \$502.50 made by the United Kingdom Government, rather than the net amount of \$397.28 actually received by the Executrices. The difference of \$105.22 was composed of legal fees incurred in England, and from my review of similar cases I presume that the fees centred around the necessary resealing of Ontario Letters Probate.

There are three reasons why, in my opinion, the Estate should not be charged with this item of \$105.22 by way of deduction:

- (1) The payment was a reasonable expense for services abroad, and bears a close analogy to expenses necessarily incurred abroad to enable claimants to establish valid claims;

- (2) Rather than subjecting the War Claims Fund to a heavy drain (which is the principal reason against the allowance of expenses in general) this specific expense was a *sine qua non* in the establishment of a payment deductible from the present award;

- (3) Allowance of this item does not constitute a positive addition to this Commission's award, but merely an equitable adjustment of the net deduction for satisfaction otherwise provided *pro tanto*.

The further expense paid by the Estate to Ontario solicitors is not in the same category, and must be disallowed, especially as administration in Ontario was necessary for other purposes. I would recommend the deduction of \$397.28.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, except as above noted.

I accordingly recommend

(a) that the claimant Susan W. Borthwick be paid \$1213.95 as an award for loss of personal property on the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3, and to bear simple interest from 3rd September 1939 at 3% per annum, subject to deduction of \$804.00 received from the Government of The United Kingdom, with interest adjustment thereon from 21st March 1948;

(b) that the claimant Mrs. Susan W. Borthwick and her sister Mrs. Janet Connor, as executrices of the will of Robert Howe, deceased, be paid \$728.40 as an award for loss of personal property by the said Robert Howe on the sinking of the S.S. "*Athenia*", such payment to be in order of priority No. 3, and to bear simple interest at 3% per annum from 3rd September 1939, upon deduction of \$397.28, with interest adjustment thereon from 3rd May 1949. Subject to completion of the administration of Mr. Howe's estate, the beneficiaries of this award in equal shares are the two executrices, both Canadians at all relevant times;

(c) that the claim for personal injury to Robert Howe be disallowed.

Dated this 22nd day of June A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2110

Re: Jamieson

Deputy Commissioner Francis has submitted to me his findings and recommendation on the property claim in this case, and a supplementary report on certain points arising after the making of his recommendation.

The claimant has been furnished with a copy of each report and has waived presentation of further materials on review.

Among the findings made by the learned Deputy Commissioner is the fact of an advance of \$5,929.00 made by Ford Motor Company of Canada Limited to the claimant and his wife in November 1948 on the claimant's undertaking to reimburse the Ford Company from any monies which he might receive by way of compensation for war losses. If no compensation were received there would be no obligation on the part of the claimant to repay the Company. A payment made with such an obligation to repay constitutes a form of interim compensation, and is thereby saved from being regarded as satisfaction otherwise provided for. For that reason, the person or Company making the payment becomes subrogated *pro tanto* to the "rights" of the claimant in claiming against the Canadian War Claims Fund. The amount of the interim advance should therefore, in my opinion, be paid directly to the Ford Company, and should carry its proportionate share of the interest allowed.

With this variation as to direction for payment, I approve the reports of the learned Deputy Commissioner and I recommend:

(a) that the claimant be paid \$11,537.00 as an award for loss of property in Malaya, such payment to be in orders of Priority Nos. 3(a), 3(b), 4, and 5, and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$5,929.00 paid by way of interim compensation by Ford Motor Company of Canada Limited, with interest adjustment from 30th November 1948;

- (b) that Ford Motor Company of Canada Limited be paid the said deducted sum of \$5,929.00, as a reimbursement of interim compensation paid, such payment to be subject to orders of Priority Nos. 3(a), 3(b), and 4, and to bear interest from 30th November 1948, and to be further subject to deduction of \$2,256.46 received from the Malayan War Damage Commission, with interest adjustment on the latter amount from 19th March 1955.

Dated this 11th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2213

Re: Lasenba

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

On review, I find that by Minute of Treasury Board (No. 438173) an award of \$1,365.00 was recommended in respect of the maltreatment of Earl Lasenba, E-29932, now deceased. The reference by Treasury Board to this Commission in the present case is apparently solely for the purpose of establishing the identity and eligibility of the "dependents" of the deceased serviceman pursuant to the War Claims Rules. It is therefore necessary that the amount of the award to be recommended by this Commission should be reconciled with the amount already fixed by the Treasury Board.

With this variation, I approve the report of the Deputy Commissioner and, applying the observations regarding trusteeship of awards to minors which I made in the case of Mrs. Emilie Jane Rogers, No. 1501, I therefore recommend that the award of \$1,365.00 in respect of the maltreatment of the late Rifleman Earl Lasenba be paid to the District Administrator, Department of Veterans Affairs, Montreal, in trust for the deceased serviceman's minor children Elizabeth Belinda Lasenba, Janet Isabel Lasenba, and Stanley William Lasenba, in equal shares of \$455.00 each.

Dated this 3rd day of February, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2215

Re: Edmonds

The above claims were heard by me orally in London, Ontario on Tuesday, November 3, 1953. Mrs. Edmonds claims compensation for the maltreatment of herself and her two minor sons while interned by the Japanese during World War II. A claim has also been filed by her husband, Mr. Henry Wesley Edmonds (Case No. 2425) but Mr. Edmonds was not able to attend this hearing and his claim will be heard later.

Mr. and Mrs. Edmonds are natural-born Canadians who have retained their Canadian status at all times. They were married at Edmonton, Alberta on April 1, 1925, and went to the Philippine Islands to engage in missionary work two years later. They had resided in the Philippines since 1927 and were there at the outbreak of the war. The Canadian status and the internment of the Edmonds' family in the Philippines have been confirmed from official sources.

At the time of the Japanese occupation of the islands, the Edmonds' family were residing at Cotabato, Mindanao, and when they realized that the Japanese were about to take over, they fled into the hills where they remained with other refugees from the end of December, 1941 until the beginning of October, 1942. As the Japanese occupation became more effective, they realized that by remaining in hiding they would probably get their native friends into trouble with the Japanese. They therefore decided to surrender to the Japanese authority, which they did on October 2, 1942 at Cotabato. At that time, Lowell, the older boy, was only $3\frac{1}{2}$ years old, and Merrill was only five weeks old. They were placed in a house in Cotabato with a group of about ten missionaries. At first they were only under general surveillance and could go to the market to buy their food. They were in this house for about a month and were then moved to another Philippino home which was closer to a Japanese camp where they were under closer surveillance. They were permitted, however, to go in small groups, under guard, to market to purchase their supplies. There were altogether about forty missionaries in this establishment and they remained there until about Christmas.

On December 27, 1942 they were moved to an internment camp that had been prepared at Davao, on the opposite or eastern side of Mindanao Island. This had formerly been a club house and was now being operated by the Japanese as an internment camp. They were under guard at all times and a certain amount of rice and vegetables and meat was supplied by the Japanese to the internees. These rations were quite inadequate, however, and had to be supplemented by additional supplies purchased by the internees at their own expense. There were about 300 American, British and Canadian internees in this camp, which was run by a camp committee. The Edmonds' family was at Davao until about Christmas 1943 when they were taken to the Santo Tomas internment camp at Manila. Conditions at the Santo Tomas camp from 1944 until the camp was liberated are well-known, and I need not dwell upon them here. The Edmonds' family was liberated from Santo Tomas on February 3, 1945.

Under the Rules, time spent under house arrest or similar restrictions does not count toward the award of compensation for maltreatment, internment in Japanese-operated internment camps only being the basis of the award. I find that Mrs. Edmonds and her two sons were confined in Japanese-operated internment camps from December 31, 1942 until February 3, 1945, the date of their liberation, a period of 766 days. In view of the tender age of the two young boys, it is unlikely that they suffered any serious maltreatment, but the Rules make no distinction in this regard, an award of \$1.00 for each day of actual internment being allowed all internees irrespective of age or condition. I, therefore, recommend that awards of compensation for maltreatment in the sum of \$766 be paid to Mrs. Edmonds and to each of her two sons. As the boys are now only 14 and 11 years old respectively, I recommend that their awards be paid on their behalf to their father and natural guardian, Mr. Henry Wesley Edmonds.

16th November 1953.

(Sgd) JAMES FRANCIS, Q.C.
Deputy Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report.

On review, it was represented on behalf of the claimants that the time spent in Japanese internment camps really began on 2nd October 1942 instead

of 31st December 1942, as allowed by the Deputy Commissioner. The interval in dispute was the time during which the claimants were detained in former Filipino houses at Cotabato. In the first of these houses, they remained about two weeks, at the end of which they were transferred to another former home and placed under closer surveillance. "They were permitted to go in small groups, under guard, to market to purchase their supplies."

This is a borderline case between what has been termed "house arrest" and complete internment. There is no evidence that the claimants, during their detention at Cotabato, were submitted to anything like the extreme maltreatment which has been found to characterize the generality of prison camps operated by the Japanese. But, after reviewing these claims in conjunction with others disclosing somewhat similar incidents, I have concluded that the claimants should be given the benefit of the doubt and should be considered as having been interned in a Japanese-administered camp from the time of their transfer to the second house at Cotabato. This technical increase in the length of internment would allow an averaging of the degree of maltreatment suffered over the whole period of detention. The relevant increase in the number of days would be from 766 to 842.

With this variation, I approve the Deputy Commissioner's report, and I recommend that the claimant, Mrs. Anna Muriel Edmonds, be paid:

- (a) Award for maltreatment of herself while civilian internee in the Far East, \$842.00, in order of Priority No. (1-2);
- (b) Award in trust for Merrill Walter Edmonds for maltreatment of himself, while a civilian internee in the Far East, \$842.00, in order of Priority No. (1-2);
- (c) Award in trust for Lowell Wesley Edmonds for maltreatment of himself, while a civilian internee in the Far East, \$842.00, in order of Priority No. (1-2).

Dated this 20th day of April, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2240

Re: Clark

In my recommendation for pecuniary loss resulting from personal injury to this claimant, the question arose as to the date at which interest on the amount recommended should begin to run. As the same question will arise in numerous cases, it is considered advisable that I should add this memorandum, explaining the method of interpretation which I have held to be applicable to the commencement of interest in cases involving personal injury incurred elsewhere than on the high seas.

It is clear that disbursements for medical and similar expenses should bear interest from the date of the respective disbursements.

As to the remaining element of compensation for pecuniary loss caused by personal injury, which usually consists largely of loss or diminution of earning capacity, it is clear that the Advisory Commissioner (p. 89) intended that a claimant for such compensation should be paid interest beginning from the date of the personal injury (or if it was inflicted by maltreatment in internment or detention, from the date of liberation).

The War Claims Regulations, which were enacted by P.C. 4267 (1952) and which set up the "War Claims Rules" by the adoption of the Advisory Commis-

sioner's recommendations, with certain specific modifications, regrouped the provisions recommended for the commencement of interest, and obviously intended to make some alteration in the provisions recommended by the Advisory Commissioner.

The question which arose in this case for decision is whether compensation for personal injury (excluding disbursements) bears interest (A) specifically from the date of the loss, under Section 5(b) of the Regulations, or (B) residually from January 1, 1946, under Section 5(d). The decision of this question will depend on the interpretation of Section 5(b), "for personal injury or death on the high seas from the date of the loss". It is obvious that Section 5(b) is open to either of two constructions, respectively (B) that the phrase "on the high seas" qualifies both "personal injury" and "death", or (A) that it qualifies only "death".

After careful consideration of the whole problem, I have favoured the latter interpretation (A), and have construed Section 5(b) to mean for personal injury occurring anywhere or death occurring on the high seas. The reasons which have appeared to me to be most valid in support of such conclusion may be summarised as follows:

(1) No inference can be drawn from the fact that personal injury and death are grouped together in subsection (b). If it had been intended to limit the expression "personal injury" in subsection (b) to "personal injury occurring on the high seas", there would have been a clear-cut distinction between all losses occurring on the high seas and those occurring elsewhere; the natural framing of the Section in that case would have been to combine subsections (a) and (b) in a single subsection referring to all losses occurring on the high seas, and including property losses, personal injury, and death. The creation of separate subsections (a) and (b), though it does not conclusively lead to any line of interpretation, does indicate that the distinction intended is not so clear-cut as would have been the case if these two subsections had been combined.

(2) In so far as Section 5 of the Regulations amends the specific recommendations of the Advisory Commissioner, the interpretation (A) which I have adopted makes a lesser modification than would the contrary interpretation (B), and is therefore considered to be preferable according to the ordinary rules for interpretation of amending enactments.

(3) The interpretation (A) is also preferable as being more consonant with the general principles underlying the recommendations of the Advisory Commissioner as to the commencement of interest, namely that interest should start to run from the date of the loss. What Section 5(d) of the Regulations unquestionably is intended to mean is, not that the interest should begin at some date other than the actual loss, but that, owing to the difficulty of determining intrinsically the date of actual loss in each individual case, the date of loss in all cases not included in the three preceding subsections shall be deemed to have been January 1, 1946. The necessity of fixing an arbitrary date for the impact of pecuniary loss in cases of property losses or death caused elsewhere than on the high seas is made clear in the Advisory Commissioner's recommendation. If, for instance, a claim is made for death caused on the high seas, the normal time of the loss is the time of death, because if the deceased had survived he presumably could have proceeded to his destination and continued to exercise his earning powers or other contribution to the claimant. If, on the other hand, the deceased met his death elsewhere than on the high seas, it would usually be in an enemy country, or an enemy-occupied country, or a theatre of actual war, and the probability is that he would not have been able to continue or resume the exercise of his earning powers until the time when he would normally have been liberated had he been alive. That time

would normally be about, or shortly after, the conclusion of hostilities, and therefore January 1, 1946 is a logical time to fix for the commencement of the resulting pecuniary loss. The same distinction applies by analogy to claimants for loss of property; if such loss occurred elsewhere than on the high seas, the presumption is that if the property had not been lost its earning power would have been immobilized until after the conclusion of the war.

The same distinction does not, however, apply to cases of personal injury, because the injured person might very well have been restored to the exercise of his earning powers by liberation prior to the termination of hostilities. This was the case in relation to a great many claimants for personal injury, of which the great majority are concerned with the effects of maltreatment during internment or detention.

The provision of Regulation 5, to the extent that awards for property losses and death occurring elsewhere than on the high seas shall not bear interest until January 1, 1946, is therefore in consonance with the principles underlying the recommendation of the Advisory Commissioner. A similar provision respecting claims for personal injury would not be consonant with but would be a variation of that underlying principle.

(4) Interpretation (A) is admittedly more closely in accord with the general principles of equitable compensation.

On the interpretation which I have adopted, Section 5 of the Regulations preserves in toto the general principle and equitable conclusions of the recommendations made by the Advisory Commissioner. The sole change from his specific recommendations is to fix January 1, 1946, by a conclusive presumption of fact, as the date when each loss occasioned by death occurring elsewhere than on the high seas is deemed to have been sustained, either because of the presumption that the deceased would normally have been released from internment about that date, or otherwise.

Dated this 1st day of December, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2286

Re: Gibbons

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

On review of the Deputy Commissioner's report, I agree with his opinion that the claimant has not established his position as a dependent, in the strict legal sense, of his son the deceased Harold E. Gibbons. The question, however, arises whether the claimant to survival of a maltreatment award need show technical dependency in such a degree as would place an obligation on the son if he had continued to live, or as would entitle the claimant to a pension upon the death of his son.

To answer that question, an examination of the nature, and the conditions of survival, of a maltreatment award is pertinent. The award is not based on pecuniary loss; nor does it give rise to any legal right of action. It is in the nature of solatium to the person maltreated, and highly personal in character. Its survival is also highly personal in character. Never does the award survive for the benefit of the estate of the maltreated person, but rather for the benefit of dependents as "defined" by the enumeration of a list of persons at page 55 of the Report of the Advisory Commissioner. The enumeration is chiefly useful in determining priorities as among the groups of dependents thereby "defined".

The widow and children of the deceased are deemed to be dependents, whereas the husband or parent(s) must establish dependency. That the contemplated dependency is of a highly personal, rather than a legally technical, character is plain from the implied provision that a surviving son, no matter how affluent in his own right, has an indefeasible priority to the exclusion of a surviving parent, however indigent.

Dependent parents are last in the enumeration of priorities, and therefore a claim by a surviving parent who is the sole potential dependent presents no problem of rival priorities or contending rights. There being no other potential claimants, the ultimate question of survivorship must be decided, and I think the decision should be made on a highly personal basis.

If the sole surviving "dependent" were a millionaire son, the award would unquestionably survive for his benefit. If the sole potential claimant is a parent, I think the award should be held to survive if dependency is established in the sense of a comparative stringency in family finances, to the relief of which the deceased was contributing before his death and was likely to have continued contributions if he had lived.

In numerous cases which I have recently reviewed, maltreatment awards have been held to survive for the benefit of parents who had not been in receipt either of dependent's allowance during the life of their son, or of pension consequent upon his death. In at least one case (*No. 2318, re Boudreau*) the claimant was granted an award for maltreatment of his son, though his application for a pension had been refused.

Those decisions point to the recognition of a very proper distinction between the degree of dependency necessary to obtain a dependent's allowance or a pension, and that necessary to found a claim to the survival of a maltreatment award. In the absence of such a distinction maltreatment awards would survive merely as supplements to pensions.

In the present case the deceased, before enlistment at 17, had been contributing from his earnings about \$7.00 per week to the family budget, besides assisting in the chores about home. From his enlistment to his death he assigned \$20.00 per month of his pay to his father. It is altogether likely that those contributions would have continued for at least some time if the son had lived, though of course the extent of that continuance might have been shortened by the possible marriage of the son. The claimant, though now in somewhat improved financial condition, still lives on a farm which is mortgaged for over half the amount of its purchase price, and is further indebted to a bank.

The likelihood of the son's contributing for some period to relief of the claimant's stringent family finances constitutes, in my opinion, a degree of dependency entitling the claimant to the survival of a maltreatment award.

The question remains whether he should receive the full award, or only the half to which he would have been entitled if the claim had been adjudicated immediately after the son's death. The War Claims Rules make no provision as to the time at which the dependency relevant to this class of cases should be determined. In the absence of such provision, an equitable determination should take into account the situation prevailing at various times over the whole period elapsed since the son's death in January 1944. This claimant's "dependency", and the likelihood of his son's continuance of contribution, seem particularly related to the period when the boy's mother was alive; she died in December 1948. By relation to that period, the claimant would be entitled to one-half the amount of \$739.00 which the son would have received if he had lived.

I therefore vary the recommendation of the Deputy Commissioner to the extent of recommending that the claimant be paid:

Award for maltreatment of late son Rifleman Harold E. Gibbons \$369.50, in order of Priority No. (1-2).

Dated this 30th day of October, A.D. 1953.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2335

Re: Gibb

On 4th December 1953, a Minute of Treasury Board was passed, authorizing payment to Frank Stewart Murray Gibb of the award of \$1,299.00 in respect of his claim arising out of maltreatment of former war prisoners in the Far East.

After the passing of this authorization, it was learned that Mr. Gibb had died on 5th November 1953.

A claim to the above award has now been made on behalf of Mrs. Silvia Quercetti, as executrix and sole beneficiary of the will of the late Mr. Gibb.

It is prescribed by the War Claims Rules that a maltreatment award is in the nature of a personal solatium, and that it does not survive for the benefit of an estate. In this case there are apparently no "dependents" within the provisions of the War Claims Rules, as laid down in the enumeration on p. 55 of the Report of the Advisory Commissioner.

If the late Mr. Gibb had died after the passing of the Treasury Board authorization, it would be at least arguable that the award thereby authorized would form part of his estate and should be paid to the executrix. Since, however, the award was made in Mr. Gibb's favour after his death, it would not be operative, and therefore the right to an award would not survive for the benefit of his estate.

There being no "dependents" who could make a valid claim, I find (after consultation with a group of three of the Deputy Commissioners) that the right to claim this award lapsed with the death of the late Mr. Gibb, and cannot now be entertained by the Commission.

I therefore recommend that the claim be disallowed.

Dated this 6th day of April, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

In my report dated 6th April 1954, I recommended disallowance of this claim (after consultation with a panel of the Deputy Commissioners) on the ground that the late Mr. Gibb had died on 5th November 1953, before the passing of the Minute of Treasury Board, on 4th December 1953, which authorized payment to him of the award for \$1,299.00 in respect of his claim arising out of maltreatment as a prisoner of war in the Far East.

Notice of this claim was first given on 21st November 1952.

I have since had occasion to review this claim again in conjunction with a number of other claims involving a somewhat similar question. For the reasons set forth in *Case No. 9941—Estate of Marie L. Jones*, I am now of the opinion that this claimant and his estate should not be prejudiced by reason of the

inability of the Commission to adjudicate upon all claims immediately after their presentation. At the time of presenting his claim, the late Mr. Gibb was eligible to receive a maltreatment award, and was prevented from doing so only by the unavoidable delay in the processing and adjudication of the vast number of claims presented to the Commission. This delay was entirely accidental so far as the eligibility of Mr. Gibb or the validity of his claim was concerned. I have therefore concluded that the award for which Mr. Gibb was eligible should survive for the benefit of his estate.

I accordingly reverse my recommendation of 6th April 1954, and now recommend that the claimant Carl McLelland Stewart as Administrator of the Estate of Francis Stewart Murray (Morey) Gibb be paid \$1,299.00 as an award for maltreatment of the late Mr. Gibb whilst a prisoner of war in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 7th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2367

Re: Vermette

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

Although I agree with the practical result of the recommendation made by the Deputy Commissioner, I think it should be formally re-stated. Though the conduct and mental capacity of this widow may make it inadvisable to allow her to handle the funds resulting from the award, the Commission has no jurisdiction, in my opinion, to disentitle a person to the making of an award on her behalf, either on account of moral misconduct or mental condition.

I would therefore recommend that the award for maltreatment of the late Patrick Vermette be divided in the method prescribed by the War Claims Rules, namely one-half in equal shares to the four minor children, and the remaining one-half to the widow.

In view of the minority of the children, and of the apparent moral misconduct and mental condition of the widow, I recommend that the full award of \$296.00 be paid to the District Administrator of the Department of Veterans Affairs at Saint John, N.B., in trust for, and for administration on behalf of the widow and children in the following shares:

(a) Mrs. Elizabeth Vermette	\$ 148.00
(b) Gloria Vermette	37.00
(c) Jean Vermette	37.00
(d) Catherine Vermette	37.00
(e) Margaret Vermette	37.00

it being understood that the trust and administration on behalf of the widow Elizabeth Vermette shall include her family obligations to her minor children. Such payments should be in order of Priority No. (1-2).

Dated this 17th day of March, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2368

Re: Barnes

This claim was heard orally by me in Ottawa on Monday, October 19th 1953. The claimant attended in person and Mr. R. J. Batt appeared for the Commission.

The claimant is a natural-born Canadian who has always retained his Canadian status. He first went to China prior to World War I and, with the exception of a period of military service during that war, has continued to reside in China. At the outbreak of World War II he was employed as Secretary and Municipal Engineer by the Tientsin Municipal Council and resided in Tientsin with his wife and son. He was replaced in his position by a Japanese appointee shortly after the Japanese occupation of Tientsin. He claims compensation for maltreatment while interned by the Japanese, for loss of property and for loss of salary and position. I shall deal with these several items consecutively.

Maltreatment

On December 8th, 1941, the Japanese occupied Tientsin. For a short time the claimant was allowed to live at his residence on Bruce Road, but he was later ordered to vacate those premises and to turn them over, with the furniture, to his Japanese successor in office. He was allotted one room in a house on Race Course Road to which he moved on February 28th, 1942, and where he remained until March 23rd, 1943, when he was removed to the internment camp at Weih sien.

The Race Course Road area was not an internment camp but the persons placed there were virtually prisoners. They were ordered not to leave their place of residence, and the area was surrounded by barbed wire electrified fences and by armed guards. The Japanese supplied the bare accommodation, also light and heat, but no food or rations of any kind, and no allowance of any kind was made by the Japanese for food. Persons imprisoned in the area were permitted to have some of their servants with them, and through the servants purchased with their own funds the food they required. When he entered the area the claimant took with him 1500 Hong Kong dollars, all of which was spent for food while he was there.

Unfortunately for the claimant the Rules provide that the per diem award for maltreatment in the Far East shall apply only to the period actually spent in a Japanese-operated internment camp. It is true that the claimant was not free to come and go as he pleased during the period he spent at Race Course Road, but he was not interned during this period in a Japanese-operated internment camp and no award can therefore be made in respect of this period. I have considered whether some compensation could be allowed in respect of the claimant's disbursements for food during this period, but no provision has been made by the Rules for such contingencies, apparently on the principle that had the claimant not been arrested such expenditure on his own account would have been necessary. Under the rules of international warfare the Japanese had the right to arrest and hold the claimant, and the award of compensation for maltreatment applies only in cases in which serious maltreatment has been established or may be presumed.

From March 24th, 1943 until September 12th, 1943, when he was liberated for repatriation, the claimant was interned in a Japanese-operated internment camp at Weih sien. For this period of 173 days he is eligible for an award of compensation at the rate of one dollar for each day of his internment.

Loss of Property

Before the claimant was moved to Race Course Road, the Japanese had taken from him his motor car and all the furnishings and effects, with the exception of his personal clothing and effects, located at the Bruce Road residence. The Japanese officials gave him receipts for the car, the furniture, and for a collection of 4,200 Yuan silver dollars which the claimant had collected as a reserve against the then depreciating paper currency. These receipts were forwarded by the claimant's lawyer, Harry C. Eastham, Tientsin, to the Swiss Consul in charge of British Affairs in Tientsin who, on September 11th, 1942, in a letter to Mr. Eastham, acknowledged having received them. The receipt for the furniture was in the form of an itemized inventory signed by the claimant and by the Japanese official who received the furniture from him. These receipts have since been lost, but the claimant has produced the original letter from the Swiss Consul at Tientsin referred to above, which may be accepted as substantial corroboration of the claimant's statements regarding these matters.

The details of his claim for loss of property are as follows:—

1. Plymouth motor car, 1937 model	\$ 2,000
2. Furniture and household effects	2,500
3. Collection of 4,200 silver coins	2,100
4. Clothing and other personal effects	500
5. Bank account at Tientsin	500

I shall deal with each of these items separately.

1. Motor car

The claimant purchased this car in New Brunswick and had it shipped to Tientsin. The purchase price was \$1,100 and the cost of shipment to Tientsin, including customs duties, was substantial. The claimant is unable at this time to state even the approximate total of these costs. In the absence of more precise figures, I must fix a reasonable sum in respect thereof, and I would allow him, for this purpose, an amount of \$650. When it was seized by the Japanese, the car was in very good condition, having run only 5,000 miles, and having always been well cared for. I must, however, allow for depreciation during the four-year period in which it was used by the claimant, and I fix the allowance for depreciation at an average rate of ten per centum of the laid-down cost per annum. From the laid-down cost of \$1,750 there must therefore be deducted depreciation in the sum of \$700, leaving the sum of \$1,050 as the amount of compensation I would allow in respect of the car.

2. Furniture and household effects

As stated above, the claimant was ordered to vacate the Bruce Road premises and the furniture and effects therein were taken over by the Japanese for their purposes. He states that he never saw any of the seized property again, which is not surprising as he was liberated before the Japanese occupation ended. The inventory referred to above, signed by the claimant and the Japanese official and filed with the Swiss Consul, has been lost and cannot now be located. Before me the claimant stated that the household furniture, consisting of dining-room, drawing-room, library and two bedroom sets was designed by his wife and made to order from selected teak woods, and that the various pieces of incidental furniture were of good quality and made of such woods as Chinese black wood. He estimates the value of the principal furnishings (articles of minor value being omitted) at \$2,500, which is the amount that he claims

in respect of this item. Immediately following the hearing, he submitted a detailed inventory which shows his residence to have been exceptionally well furnished with furniture of very good quality. In view of the claimant's position and circumstances at the time, and the contents of the inventory now received, I consider his estimate to be reasonable and I would allow this item at the full amount claimed.

3. *Collection of silver Chinese coins*

In view of the then depreciating paper currency and as a reserve against future contingencies, the claimant had accumulated a collection of 4,200 silver Yuan (so-called) dollars, then valued by the claimant at fifty cents a piece in U.S. currency. This collection was seized by the Japanese and, as noted above, the claimant was given a receipt for the coins which was forwarded to the Swiss Consul at Tientsin and was subsequently lost. I find that reasonable proof of the loss of this collection of coins has been established.

The evaluation of this collection of coins, which might appear to be a relatively simple matter, has been the sole reason for the delay in completing this recommendation. I had to consider, first, whether the loss was a property or a currency loss and, secondly, what would be the value, under the Rules, of the collection of coins as a "property" loss or as a "currency" loss. As to the first question, I have no hesitation in deciding that the loss was, in fact, a property loss. The claimant had taken the precaution, in view of the then depreciating paper currency, to convert part of his income into silver dollars. By doing so he was, in fact, purchasing a certain quantity of silver which, he hoped, would retain its value in a period of rapid inflation. He could equally well have invested in diamonds or any other staple commodity. I am informed, however, that the Chinese dollar is a difficult coin to evaluate, and that although it was established in China in 1933 as the basis of the monetary system, no further use of silver dollars or bullion was permitted for currency purposes after November 1935. I have therefore sought expert advice on the point and I have received the following information from the Department of Finance at Ottawa:—

"We are advised by the Bank of Canada that The Handbook of Foreign Currencies issued by the U.S. Department of Commerce in 1936, after indicating that the yuan is a silver coin with no fixed value in terms of gold, states that it has a gross weight of 26.2971 grammes and a fineness of 0.880. According to the Twenty-sixth Annual Review of the Silver Market put out by Handy & Harman, New York, which gives a review of the silver market for 1941, the New York official price for silver for the first ten months of that year was 34.750 cents per ounce troy. Throughout 1941 the official buying rate for U.S. dollars in Canada was 1.10.

Using these various factors we arrive at a rate of .2844 (28.44 cents) as the bullion value of the Chinese silver yuan dollar coin at June 30th, 1941."

This appears to be the most authoritative information available on the subject and I must accept it. I find, therefore, that the value of the so-called yuan dollar was the equivalent of 28.44 cents Canadian as of June 30th, 1941, and I would allow the claimant compensation in the sum of \$1,194.48 for the loss of this collection of 4,200 yuan silver dollars.

4. *Clothing and personal effects*

Before leaving his Bruce Road residence, the claimant was ordered to pack his clothing and personal effects and turn them over to the Japanese for

shipment. He was told at that time that he was to be repatriated and that his effects would accompany him on the repatriation vessel. He therefore packed the more valuable of his personal effects in five trunks which were taken by the Japanese, as he believes, to a warehouse to be held for shipment with him. However, the promised repatriation did not materialize and the claimant never saw his effects again. He made no inventory of these articles as an inventory in the circumstances did not seem necessary, but he states that each of the five trunks contained clothing and other effects to a value of at least one hundred dollars. I accept his valuation of those effects and would allow this item at the full amount claimed, \$500.

5. *Bank account at Tientsin*

At the time of the Japanese occupation, the claimant had on deposit with the Tientsin Branch of the Hong Kong and Shanghai Banking Corporation a deposit of 3,000 Federal Reserve Bank dollars. Shortly after the Japanese occupation the business of the above Bank in Tientsin was taken over by the Yokohama Specie Bank, and the claimant was not permitted to withdraw any of his funds or to make payments therefrom. Partial corroboration of the above deposit has been filed by the claimant in the form of a letter dated January 25th, 1952 from the Acting Chief Accountant of the Hong Kong and Shanghai Banking Corporation at Hong Kong in which it is stated, *inter alia*, that the greater part of the Bank's records in Tientsin were destroyed during the War. I accept the claimant's statement that he had \$3,000 Federal Reserve Bank currency on deposit in the Tientsin Branch at the time of the Japanese occupation, that this deposit was taken over by the Yokohama Specie Bank as the agent of the Japanese authority, and that it has not been revested in him. I recommend, therefore, that he be compensated for this loss in accordance with the provisions of the War Claims Rules in respect of losses of this kind. Under these provisions the conversion of the amount of the deposit to Canadian currency must be made as of December 30th, 1949 at which date the approximate value of the Chinese dollar in terms of Canadian currency was .000052381. When so converted, the value in Canadian currency of the deposit is less than sixteen cents or exactly .157143. It is unfortunate for the claimant that this rate must be adopted, but it is the rate fixed by the Rules and must therefore be applied.

Loss of Salary and Position

The claimant also claims compensation in a total amount of £8,415 sterling for loss of salary and position, the various items of which are made up in accordance with a scale of compensation for ex-employees of Municipal Councils in the British areas in China of which Tientsin was one. Payments are said to have been made in accordance with this scale by the British Government to those ex-employees only who derive their nationality from the United Kingdom by birth or naturalization. No payments have apparently been made to other than United Kingdom nationals and the claimant has no expectation of receiving any payment from this source. For this reason, he claims the equivalent of £8,415 sterling from the Canadian War Claims Fund. Unfortunately, there is no authority under the War Claims Rules for payment of an award of compensation for losses of this kind. The Rules state quite clearly that claims for loss of income during internment cannot be allowed as under International Law internment is legitimate and is not the basis of an admissible claim. The same principle must be applied to loss of career and superannuation contributions. These are matters that cannot be considered to fall within the scope of war damages compensable under the War Claims Rules. The careers of countless thousands of persons were radically changed and in many cases ended by

the war. They are misfortunes that are inseparable from war itself which were suffered generally by large numbers of people and for which it would be manifestly impossible to provide compensation. I must, therefore, recommend that this part of the claim be disallowed.

To summarize, I recommend that the claimant be paid awards of compensation as follows:—

1. In respect of maltreatment 173 days		\$ 173.00
2. For loss of property:		
(a) Motor car	\$1,050.00	
(b) Furniture	2,500.00	
(c) Collection of silver coins	1,194.48	
(d) Clothing, etc.	500.00	
(e) Bank account16	
	<hr/>	\$5,244.64
		<hr/>
		\$5,417.64
		<hr/>

In accordance with the Rules, the award of compensation for loss of property will bear simple interest at three per centum per annum from January 1st, 1946.

February 15th, 1954.

(Sgd) JAMES FRANCIS, Q.C.

Deputy Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted a fairly lengthy argument in support of the contention that his award should be increased. The claimant's arguments are exceptionally well presented, but I find that the points in issue have been so lucidly dealt with by the Deputy Commissioner that I need add very little.

The principal complaint of the claimant against the award is that he is not allowed compensation for loss of position and prospective salary. He seeks to justify such an allowance by drawing a distinction between the prospective earnings under a contract for a fixed term of years, and those whose continuity are not so assured. He submits that the former type of salaries constitute "contract debts" which are allowable, in certain circumstances, under the Ilsley Report. Apart from the fact that loss of prospective earnings, whether under a contract for a term of years or otherwise, sounds in damages but not in debt, the War Claims Rules based on the Ilsley Report (p. 40) specifically provide that "the claims which have been made for loss of income during or as a result of internment should not be allowed".

The only other argument of the claimant which requires special attention is that which refers to the value of his motor car. The claimant states that in June 1941 he refused an offer of the equivalent of U.S. \$2,000 for his 1937 Plymouth car. Though this offer probably represented a price artificially inflated by the scarcity of motor cars, it appears to me that the car was probably worth a little more than was allowed by the Deputy Commissioner. Two factors would, perhaps, entitle the claimant to a slightly increased award. Since the cost of shipment and customs duties were allowed as separate factors in assessing the value of the car, I do not think they would be subject to

depreciation in the same percentage as the original purchase price, especially at a time when a motor vehicle was not easily replaceable; secondly the depreciation from the original cost of the car would be to some extent offset by an intervening increase in the price of motor vehicles. It is impossible to assess the effect of these two factors with any accuracy, but I would allow the claimant an additional \$300.00 in respect of his motor vehicle.

With this variation, I approve the report of the Deputy Commissioner, and I accordingly recommend that the claimant be paid:—

- (a) Award for maltreatment of himself \$173.00, in order of Priority No. (1-2);
- (b) Award for loss of personal property \$5,544.64, in order of Priority Nos. (3) and (4), with simple interest from 1st January 1946 at 3% per annum.

Dated this 23rd day of March, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2375

Re: Charbonneau

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The Claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review, except in rebuttal of the tentatively proposed reduction to which I shall now refer.

It has seemed to me to be doubtful whether the loss of transportation to Capetown constituted in the case of this claimant any pecuniary loss. After repatriation, this claimant did not proceed to Africa, and it is not shown that his arrival in Africa in 1941 would have enabled him to earn any pecuniary compensation for the services which he intended to perform there. On the other hand, the Government of Canada has granted to him *ex gratia* compensation, though modest, for services rendered in Europe as a result of his accidental arrival on that continent. It would therefore appear to me that the claimant is better off financially than if he had arrived in South Africa without interruption to his journey. The incident undoubtedly did involve, both for the claimant and for his Order, a great spiritual loss, and the abandonment of the opportunity for valuable service. It is not, however, possible to compensate such losses by a pecuniary award, and I have had considerable difficulty in reaching the opinion that the replacement of loss of transportation should be compensated in the case of this claimant and his four companions who did not eventually journey to Africa to take up their intended work there.

I have, however, had the benefit of a submission recently made on behalf of the claimant, and it now appears to me that the *ex gratia* compensation paid by the Government was solely related to services rendered in Europe, and should not be set off against such other items as loss of transportation to Africa. Though the failure to arrive at the African destination did not involve any future pecuniary loss to the claimant, he did lose his right to the completion of that transportation, for which he had paid \$477.85. With some hesitation, I have reached the conclusion that he should be recompensed for the loss of his right to complete the African journey, in the amount which he had paid for his transportation. As in the case of his fellows who later did proceed to Africa, it

would not be expected that he should proceed there directly from Europe, after a considerable time spent on that continent, without first returning to Canada to make renewed arrangements.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$1,177.85 as an award for loss of personal property at the sinking of the M.V. "Zam Zam", (including \$700.00 for loss of personal effects and \$477.85 for loss of cost of transportation from Montreal to Capetown), such payment to be in order of Priority No. 3(a), and to bear simple interest from 17th April, 1941 at 3% per annum.

For the reasons mentioned in the learned Deputy Commissioner's report, I must recommend disallowance of claims for loss of earnings during internment and for expenses of repatriation.

Dated this 18th day of February, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2386

Re: Lee

On 25th August last I reserved the claims for maltreatment and personal injury for further consideration. On review of these two claims, I have had the advantage of additional arguments presented orally on behalf of the claimant by Mr. E. D. Fulton, M.P.

I regret, however, that I am still unable to find any solid basis for variation of the decision of the learned Deputy Commissioner.

As to the maltreatment claim, compensable maltreatment must be founded on three factual requirements, namely (a) actual serious mistreatment by enemy captors; (b) resulting incapacity to work, which (c) persists after liberation. The only evidence of maltreatment during the claimant's pseudo-internment is that of two or three beatings, one apparently being effected with a board. This undoubtedly was maltreatment, but it is not established as being compensable because there is no evidence that it caused any incapacity persisting after liberation.

As to the claim for personal injury, such a claim must be based either upon maltreatment, or upon an actual operation of war. The claimant's disability in this case does not appear to have been caused by any act or incident which would come within either of those categories.

Two medical theories are advanced to account for the claimant's arthritis: (a) "my doctors say that it cannot be a result of anything other than my accident"; (b) the physical and emotional stress such as the claimant was subjected to during the war in Norway.

The "accident" referred to was a fall of the claimant from a scaffolding on which he was working in connection with the building of a dam. This accident was clearly not due either to maltreatment or to an act of warfare. It was also obviously not the fault of the enemy, as the Germans who ordered the construction would naturally be anxious to have it done, and done properly. If, as suggested, the faulty scaffolding was the cause, it must have been the fault of

his fellow-workers, or have been the result of sabotage. Neither of these would be an act of warfare within the meaning of the War Claims Rules, and the result would therefore not be compensable. The explanation of physical and mental stress fails on two grounds: (a) It is only a conjecture, and therefore too remote; (b) The cause in such a case would be not an act of warfare, but rather a situation arising as a result of the existence of a state of war. A physical affliction so caused could hardly be held compensable from reparations, as it would be shared in common with practically all residents of enemy, or enemy-occupied countries, and even by residents of such countries as Great Britain which felt with tremendous force the physical and mental strain of the state of war.

For the foregoing reasons, and those expressed by the Deputy Commissioner, despite the Commission's sympathy with the injury and disability of the claimant, I feel bound to approve, without variation, the report of the Deputy Commissioner, and I therefore have no alternative but to recommend the disallowance of the claims for maltreatment and personal injury.

Dated this 5th day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2390

Re: MacMillan

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report and, on review, have submitted further arguments in support of the contention that they were Canadian nationals at the time of their alleged losses in Guernsey. They specifically present a statement to the effect that in 1937 they offered their "Guernsey Groceteria" for sale with the intention of returning to Canada.

The Department of Citizenship and Immigration has repeatedly certified its ruling to the effect that the claimants did not have "Canadian domicile" during the relevant period of 20th June 1940 to 9th May 1945.

This Commission is bound to accept the ruling of the Department on that point. The only other avenue for establishment of Canadian status at the time of loss would be for the claimants to prove that they were British subjects with a common law domicile in Canada and that they therefore qualified under Item (VI) on page 24 of the Report of the Advisory Commission on War Claims.

Common law domicile is based on the coincidence of residence and intention to reside permanently or indefinitely in a certain country. Assuming that the claimants were Canadian nationals in 1933, I think it is clear that they lost their Canadian domicile, both under the Immigration Act and at common law, during their absence in Guernsey following their departure for that Island in 1933. Assuming, further, the truth of the statement that they offered their Guernsey business for sale in 1937 with a view to returning to Canada, that would not be sufficient to reestablish their domicile in Canada, as they were not then resident in this country. As the learned Deputy Commissioner points out, they did not again come to Canada until the occupation of Guernsey by the

German Army in 1940, and they again returned to Guernsey, via England, as soon as conditions permitted in 1944 and 1945.

In all the circumstances of the case, I feel bound to agree with the opinion of the learned Deputy Commissioner that the claimants did not have a domicile in Canada at the time of their losses in Guernsey, and that they are therefore not eligible to present a claim under the Canadian War Claims Rules.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that this claim be disallowed.

Dated this 18th day of June, A. D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2409

Re: Gillis

Deputy Commissioner Hyndman has submitted to me his findings and recommendations, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's reports and, on review, have submitted further materials in support of the contention that the awards should be increased.

The interests of brevity prevent my setting forth in detail the reasons now submitted on appeal from the Deputy Commissioner's recommendations. The reasons are, however, on file, and I shall refer to them by the numbers respectively assigned in the claimants' submission.

As to reasons numbered 4 and 5, I agree with the conclusion of the learned Deputy Commissioner that it is necessary to deduct the capitalized value of amounts actually received from the Workmen's Compensation Board of Nova Scotia. This deduction follows the universal practice of the Commission respecting such receipts.

As to reasons numbered 1, 2, and 6, I am of the opinion that the depreciation in the value of money which has occurred since 1942, the normally expected increase in wages which the deceased would have received had he lived, and the proportion of his earnings which he would have given to his wife or expended on her maintenance, would have amounted to a larger annual sum than that estimated by the learned Deputy Commissioner. On the other hand, due allowance must be made for the various contingencies which might terminate or interfere with the expected benefits, such as "possibility of accident, sickness, or other vicissitudes of life", referred to by the learned Deputy Commissioner. The claimants now argue (reason numbered 7) that the existence of a policy of accident insurance should be taken into consideration, particularly to the extent that it incidentally reduced the potential "possibility of accident", to which the Deputy Commissioner gave some weight. It is, I think, impossible to give any specific effect to the existence of the policy of accident insurance. I take it that the policy was one of the ordinary type of insurance policies, which are renewed for one year (or shorter period) at a time, and which do not give rise to any vested right of renewal at the option of the insured, but are subject to discontinuance in certain circumstances by the insurance company. Specifically, accident insurance companies frequently require medical examinations at the age which the deceased Mr. Gillis had reached, and decline to continue or renew the policies in cases where medical reports are not entirely satisfactory. It will therefore be seen that the existence

of an accident insurance policy at the time of the death of Mr. Gillis did not constitute a guaranteed indemnity against accident for the remainder of his expectation of life. It is, however, arguable that the existence of the policy did afford some measure of prospective protection against accident.

Making due allowance for this factor, and for the other contingencies to which I have referred, I would revise the estimated gross pecuniary loss sustained by the widow through the death of her husband to \$3,500.00 per annum for the ensuing period of ten years.

On the other hand, the learned Deputy Commissioner has noted that the claimant Mrs. Gillis was in receipt of \$100.00 per month from her late husband's employer, The Dominion Steel and Coal Company. The learned Deputy Commissioner was of the opinion that this payment, being a purely compassionate allowance, and paid entirely at the discretion of the Directors, should not be the subject of deduction.

I regret that I am unable to agree with this opinion. If the Commission did not deduct *ex gratia* payments of that kind, claimants receiving them would be placed in a better pecuniary position than they would have held if their losses had not occurred. Though the payment in question was admittedly gratuitous, it began as from 1st July 1943 and actually continued for a period exceeding the period for which the deceased's lost earnings are estimated. I see no alternative but to deduct the widow's annual revenue from that source from the gross pecuniary loss which she is found to have suffered by the death of her husband. This brings the rate of her pecuniary loss back to \$2,300.00 per annum, and, though I arrive at the figure by a different method, I agree that the claimant's total pecuniary loss has been fairly estimated by the learned Deputy Commissioner at \$19,619.47.

As to reason numbered 3, I am inclined to agree with the contention of the claimants to the effect that the matrimonial home and furniture should not properly be deducted in order to arrive at the net pecuniary loss. If her husband had lived, Mrs. Gillis would have had just as full an enjoyment of such property as she had after his death. As a matter of fact, from the pecuniary point of view, her position would probably have been better, because she would not have been faced with so great an individual cost of maintaining a home.

I am also inclined to the view that the \$3,000.00 received from Newfoundland enterprises should not be deducted, as it is a reasonable assumption that the investment of the deceased in these enterprises would have considerably appreciated in value if he had lived to participate in their promotion. I would therefore set off the amount actually received by Mrs. Gillis from Newfoundland enterprises against the loss which she probably incurred through the forced liquidation of these enterprises in a sub-normal period.

There remain, as necessary deductions from the gross pecuniary loss, the \$845.25 received by Mrs. Gillis as one-half of her husband's salary for several months following his death; the capitalization of Workmen's Compensation payments of \$5,496.27; the acceleration of pecuniary benefit received from the devolution of the motor car, Golf Club bonds, and Community Hotel Limited shares upon the widow. The total property of which the widow received an accelerated pecuniary benefit by reason of the death of her husband therefore amounts to \$760.00. The capital value of such accelerated benefit depends on a number of factors and is difficult to compute with mathematical accuracy. I would, however, estimate its capital value at the time of Mr. Gillis' death at approximately \$250.00.

The net pecuniary loss sustained by Mrs. Gillis through the death of her husband may therefore be computed as follows:

Estimated annual contribution by husband to wife (in cash and expenditure on maintenance over ten-year period):	\$3,500.00
Less annual payment received by widow from late husband's employer:	1,200.00
Remainder of expected annual contribution:	<u>\$2,300.00</u>
Capitalized value of remainder of expected annual contribution; at death of Mr. Gillis:	\$19,619.47
Subject to deduction of part salary received by widow following husband's death:	\$ 845.25
Capitalized value of Workmen's Compensation payments: ..	5,496.27
Capitalized value of acceleration of property benefits: ..	<u>250.00</u>
	<u>6,591.52</u>
Net pecuniary loss by death:	<u><u>\$13,027.95</u></u>

As to the claim for loss of property in possession of the late Mr. Gillis at the sinking of the SS "Caribou", the claimants contend that the recommended award of \$150.00 is unrealistic and inadequate. Owing to the owner's death, it is naturally difficult to obtain specific evidence either of the cash or chattels which he had with him. I am, however, inclined to agree with the contention of the claimants that possession of goods to a considerably greater value may reasonably be inferred from all the circumstances of the case, including the professional occupation of the deceased. I would estimate the amount of currency carried by the deceased at \$100.00, and the value of other personal effects lost at \$300.00. It might very well have been that the deceased carried even a larger amount of cash on his person. The practice of the Commission has, however, been to limit compensation for currency carried by a passenger to the amount normally required for the completion of the current journey. If, as the claimants suggest, the deceased was planning a trip to Newfoundland outposts, he would doubtless have had an opportunity to supplement his supply of currency on arrival in Newfoundland. I would estimate the total compensable loss of currency and personal chattels at \$400.00.

If this amount had been paid to the widow at, or shortly after the time of her husband's death, she would have enjoyed an accelerated benefit from it, which would now have to be deducted from the "death" award. For that reason, I am of the opinion that the commencement of interest on this property award should be deferred for a period of ten years from the actual loss.

With the foregoing variations, I approve the reports of the Deputy Commissioner, and I recommend that there be paid:

(a) To Mrs. Marie Theresa Gillis and John Hugh Gillis as Executors of the Estate of Hugh Bernard Gillis deceased, the sum of \$400.00 as an award for loss of property by the late Hugh Bernard Gillis at the sinking of the SS "Caribou", such payment to be in order of Priority No. 3(a) and to bear simple interest from 14th October 1952 at 3% per annum;

(b) To the claimant Mrs. Marie Theresa Gillis the sum of \$13,027.95 as an award in compensation for pecuniary loss resulting from the death of her husband, the late Hugh Bernard Gillis, at the sinking of the SS "Caribou", such

payment to be in order of Priority No. (1-2) and to bear simple interest from 14th October 1942 at 3% per annum;

(c) I recommend that the claim of John Hugh Gillis for compensation for the death of his father, the late Hugh Bernard Gillis, be disallowed.

Dated this 22nd day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2410

Re: Clifton

. . . From Moricetrewal he was taken by cattle car to Brunswick in western Germany, the journey taking about a week. He reached Brunswick on May 12th, 1944 and remained in the prison camp there until he was liberated on April 9th, 1945. Because of the continual air raids, conditions at the Brunswick camp soon became very poor and food was very scarce. The air raids started in August and continued until the end, 140 being recorded in 160 days. In the eleven months that he was in the Brunswick camp, the claimant lost thirty pounds in weight. Following his liberation he was repatriated to England where he arrived early in May 1945.

I was impressed with the evidence of the claimant which he gave in a very matter of fact way and without apparent exaggeration, and I have no difficulty in finding that he is eligible for an award of compensation for maltreatment. Because of the rather severe conditions he had to endure between his capture in North Africa and his arrival at the internment camp at Naples, I would recommend that the period of his imprisonment be deemed to have commenced on the date of his capture, namely March 3rd, 1943. He is not eligible for compensation during the period of freedom following his escape on September 8th, 1943, but the period of imprisonment recommences on March 15th, 1944, when he was recaptured and continues until April 9th, 1945, when he was liberated. He is, therefore, eligible for the maltreatment award from March 3rd to September 8th, 1943, a period of 190 days, and from March 15th, 1944 to April 9th, 1945, a period of 391 days, making a total period of 581 days of imprisonment. In addition, I would allow him compensation for the three box-car and cattle car journeys from Naples to Fontanello, from Muhlburg to Moricetrewal, and from Moricetrewal to Brunswick.

I accept his statement that a sum of 400 lire was deducted from his pay at Fontanello each month for a period of four months. This amount of 1600 lire was debited to his account by the Army authorities and was his personal loss. He states that these were not voluntary contributions for messing and, in the circumstances, I have no hesitation in finding that these deductions were illegal and should be repaid to the claimant. They were debited to him at the rate of 72 to the pound sterling and I would allow him the full amount at the rate of exchange prevailing in September, 1943, which would be approximately \$96. I recommend, therefore, that he be granted an award of compensation in the total amount of \$296.

JAMES FRANCIS, Q.C.
Deputy Commissioner

March 28th, 1954.

. . . Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation; though some items considered are unusual, the total lump sum award appears to be in order.

I accordingly recommend that the claimant be paid \$296.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 11th day of February A.D. 1955

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2430

Re: Henderson

. . . At the time of the making of my Supplementary Recommendation dated 16th May 1955, I was of the opinion that it was possible for the Commission to recommend reimbursement of the United Christian Missionary Society for loss of the benefit of the claimants' passage money to Africa which the Society had paid, notwithstanding the apparent fact that the Society was not a Canadian organization and therefore could not claim in its own right for compensation from the Canadian War Claims Fund.

I arrived at that opinion by considering that the claim was in reality a claim on behalf of the claimants, and that the Society, notwithstanding its non-Canadian character, might be entitled to receive the proceeds of that portion of their claim by way of subrogation. More mature study of this claim has, however, led me to alter my opinion on that point. As the passage money was originally paid by the Society for the purpose of advancing its missionary objectives, and was not charged to the claimants or expected to be refunded by them, the original loss would be that of the Society, and not of the claimants. The principle of subrogation to entitlement would therefore not apply, and that portion of the potential claim must be regarded as made on behalf of the Society itself. As the Society is not a Canadian organization, the War Claims Rules preclude it from making any claim in its own right.

For the foregoing reasons, I now rescind my Supplementary Recommendation of 16th May 1955, and recommend that the loss of benefit of passage money be disallowed as a compensable factor.

Dated this 27th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2444

Re: Tremblay

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted an elaborate argument in support of the contention that his award for loss of property should be increased, and that an award should be granted for personal injury.

In respect to the latter contention, the claimant urges particularly that the privations and hardships which he suffered were incurred as the result of his compliance with specific orders of the Guerilla Forces. The Guerillas apparently gave orders that, in the course of a civilian evacuation of portions of the

country threatened by Japanese occupation, the claimant and others should proceed into the interior mountains and jungles of Mindanao. Admittedly, the claimant appears to have suffered greatly from the rigours of travel over such terrain, as well as from exposure and lack of nourishment.

The Commission has, however, in no case recommended compensation either for maltreatment or personal injury resulting from collaboration with, or compliance with the orders of underground, resistance, or guerilla forces in enemy-occupied territory.

The evacuation of civilian personnel from portions of occupied countries, whether by order of guerillas, or of armed forces, or otherwise, is a concomitant of the existence of a state of war, and is not, in the opinion of the Commission, in itself an operation of war or the result of an operation of war.

I therefore see no alternative but to agree with the conclusion of the learned Deputy Commissioner and to recommend that the claim for personal injury be disallowed.

As to the claim for property loss, the claimant urges the fact that a large part of the goods which he lost was practically new, and that therefore the depreciation would be negligible. The experience of the Commission in dealing with the assessment of compensable value of goods lost, is that the market value of consumer goods is subject to considerable depreciation even in cases where the goods are relatively new. On this point, the finding of the learned deputy Commissioner, arrived at after careful consideration on the basis of an oral hearing, appears to be reasonable and in line with recommendations made by the Commission in other similar cases.

The claimant also contends that the \$200.00 which he received from the Société des Missions Étrangères, of which he was a member, should not be deducted as compensation otherwise provided for.

I believe that there is merit in this contention. If the \$200.00 was an advance to the claimant by way of interim compensation from his Order, the Order would be entitled to receive that sum back by way of subrogation to the claimant's entitlement *pro tanto*. As the financial relationship between this Order and its members is somewhat complicated, I am disposed to recommend that the \$200.00 be not deducted, but that it be left to the claimant to decide, under the rules of the Order, whether it should be refunded to the Order or not. There should also be a slight adjustment in the computation of interest for the benefit of the claimant, as indicated below.

With the foregoing variations, I approve the report of the Deputy Commissioner.

I accordingly recommend that the claimant be paid \$1,200.00 as an award for loss of property in the Philippines, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$150.00 received from the United States War Claims Commission, with interest adjustment from an estimated date of 19th December 1953.

For the reasons set forth in the report of the Deputy Commissioner and for those indicated above, I recommend that the claim for personal injury be disallowed.

Dated this 1st day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2452

Re: Mines

The claimant appeared before me at Vancouver, B.C., on March 4, 1955, in support of her claim for maltreatment at the hands of S.S. Forces at various points in Europe in the period July 1941 to November 1945, and for personal injury sustained during the period of her internment.

National Status

The claimant was born in Montreal, as appears from certificate of birth issued by the Deputy Prothonotary of the Superior Court, District of Montreal, dated 18 December 1945, on file. A letter from the Department of Citizenship and Immigration under date June 4, 1953, contains the following excerpt: "As this claimant was born at Montreal, Quebec, and since there is no indication in our records that she has at any time lost or relinquished her status, she is a natural-born Canadian citizen under the provisions of Section 4(1)(a) of the Canadian Citizenship Act." She testified before me that she had not at any time lost or abandoned her Canadian national status. She was taken from Canada to Latvia by her mother soon after her birth and remained there until that area was occupied by German forces in July 1941. She was then 17 years of age. The claimant has established that she was a Canadian citizen at the time of presentation of the claim and that she possessed Canadian national status within the meaning of the War Claims Rules at the time of the act causing the loss or damage complained of. The claimant was examined in considerable detail as to her period of internment at various camps in Europe between July 1941 and the date of her liberation on May 3, 1945, all of which appears from the transcript of her evidence now on file. It is, I think, unnecessary to examine her testimony in detail. She is of the Jewish race and at the time of her arrest in Libau, Latvia, in July 1941 was 17 years of age. She then lived with her mother and stepfather. In July 1941 she was separated from her mother and required to live in what she describes as the poor quarter at Libau, along with many other of her own race. I conclude from her evidence that until July 1, 1942, she was under a form of house arrest though she was required to perform menial tasks for German officers and soldiers. In my opinion this period of house arrest is not to be regarded as compensable.

From July 1, 1942, continuously until liberation on May 3, 1945, she testifies that she was in the custody of S.S. Troops in various concentration camps situate at Libau, Latvia; Kaiserwald, Riga; Duetsche Reichsbahn, Riga; Stutthoff, Stolp, Burggraben, Germany; and Insel Hela off the coast of Germany, and Neustadt, Schleswig-Holstein. During the whole of this latter period she was either engaged in forced labour under direction of S.S. Troops or was confined as a political prisoner in concentration camps supervised by S.S. Troops. The periods of forced labour seem to have involved work extremely heavy even for men. She appears to have been subjected from time to time to beatings and indignities such as being required to strip in the presence of S.S. Troops and then being subjected to physical examination. Many of those associated with her are said to have been badly beaten and many killed in her presence. Her Counsel has produced affidavits sworn by three persons who, from time to time, were closely associated with her in various of the camps before mentioned. These affidavits, I think, may be taken as providing substantial corroboration of her statements as to the treatment to which she was subjected during the period 1942 to 1945, and the fact of her internment at the hands of S.S. Troops. There have also been filed various identity cards from persons in authority representing Allied authorities at and subsequent to her liberation, which afford further confirmation of the fact that she was detained as a political prisoner by German forces and had been detained in German

concentration camps. There is on file a further letter which purports to have been signed by the Medical Director of a Hospital at Neustadt, Schleswig-Holstein, where the claimant received treatment between May 8, 1945, and June 27, 1945.

In my view the evidence is sufficient to establish the fact that the claimant was confined in concentration and forced labour camps maintained and operated by the S.S. criminal organization as defined by the Rules pages 50-51. Consequently I consider that on the foregoing evidence she is entitled to an award for maltreatment at the rate of \$1.00 per day for the period July 1, 1942 to May 3, 1945, being 1,045 days; a total of \$1045.00.

The claimant has further testified that her physical condition on liberation was such that she was confined to Hospital until June 27, 1945. She returned to Canada on March 2, 1946, as appears from Canadian Immigration endorsement of her Certificate of Identity issued by the Department of External Affairs. She testified that she was unable to undertake any remunerative work until November 1946, due to her condition of health brought on by the period of internment. Support is to be found for this statement in certificates which have been furnished by Dr. B. Usher, and Dr. Philip Stattner, which are attached to the Claim Form B. In November 1946 she obtained employment in a bakery shop at a remuneration of \$35.00 per week and after six months changed her employment to that of a waitress at \$40.00 per week. In my opinion it is reasonable to assume that she could have obtained remunerative employment at a minimum of \$35.00 per week on her return to Canada in March 1946 had her physical condition permitted. In the circumstances I consider that an award of compensation for personal injury should be made based on the loss of 8 months employment at the rate of \$140.00 per month, total \$1,120.00.

I therefore recommend payment to the claimant for maltreatment in the sum of \$1,045.00, and for physical injury in the sum of \$1,120.00. I further recommend payment of simple interest at the rate of 3% per annum from 1st March 1946 on the sum of \$1,120.00.

21st March 1955.

(Sgd) H. I. BIRD
Deputy Commissioner

NOTE: Award confirmed by Chief War Claims Commissioner with slight emendation 21st April, 1955.

CASE No. 2461

Re: Bothwell

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that her award should be increased.

As to the claimant's arguments on her claim for loss sustained by the death of her daughter, Mrs. William Forbes, I have no alternative but to agree with the findings and decision of the learned Deputy Commissioner. Loss of anticipated repayment of monies expended on the education of her daughter cannot form the basis of a valid claim for compensation under the War Claims Rules. Nor is there any evidence from which a valid inference of the claimant's dependency upon her daughter can be based, particularly in view of the

daughter's intervening marriage. For both reasons, as set forth in detail by the learned Deputy Commissioner, I must recommend the disallowance of the claim for compensation for death.

As to the claim for loss of property, the reasons set forth by the learned Deputy Commissioner make it clear that this claimant has no standing to claim for goods which had been given by her to her daughter, or which were otherwise owned and possessed by the daughter. The sole beneficiary of the daughter's estate was her husband, Mr. William Forbes, and the only remaining question is therefore whether the amount of compensation recommended is substantially adequate in the circumstances.

The claimant stresses the contention that the claim filed by her late daughter's husband in the sum of \$1,000.00 is entirely different from, and based on the loss of goods entirely different from, the claim which she herself put forward. I have gone into this claim very carefully in conjunction with the learned Deputy Commissioner who heard the case, and he reports that after very careful consideration he came to the conclusion that the recommended award of \$1,000.00 was completely adequate to cover the established value of all goods lost by Mrs. Barbara Forbes, whether owned by her husband, or given to her by her mother, or otherwise possessed. From the comments of the learned Deputy Commissioner, it is clear that the evidence which the claimant now adduces in support of her daughter's purchase of a typewriter would not change his total valuation of the goods.

From a letter written by Mr. Forbes to the claimant on the 23rd November 1953, it seems clear that his \$1,000 claim was intended to be an alternative to the one proposed by the claimant, and was not to be in addition to the latter.

As it seems clear that the Deputy Commissioner took into consideration all the evidence presented in this case, and reached his decision after careful deliberation on the basis of an oral hearing, I do not feel that it would be competent or proper for me to attempt to vary the estimated valuation at which he arrived.

There is another factor in the case which was not mentioned by the learned Deputy Commissioner. Even if, as the claimant alleges, her daughter shipped on the *Lady Hawkins* a quantity of household goods purchased by or on behalf of her husband, in addition to another group of household articles given to her by her mother, the Commission would require that such goods, with the exception of personal effects normally carried in the baggage of a passenger, should be covered by war risk insurance. The Commission would therefore be obliged to deduct, from any recommended award, the proceeds of a potential insurance policy, as well as the estimated cost of the premium.

For these reasons, as well as for those set forth by the Deputy Commissioner, I do not consider it possible to increase the amount of the award recommended in this case.

I therefore approve the report of the learned Deputy Commissioner without variation, and I recommend that the claimant, as attorney and agent for William Forbes, be paid \$1,000.00 as an award for personal property lost at the sinking of the S.S. "*Lady Hawkins*", such payment to be in order of Priority No. 3(a) and to bear simple interest from 19th January 1942 at 3% per annum.

I recommend that the claim for compensation for death, as well as the claim of Mrs. Bothwell for loss of property be disallowed.

Dated this 2nd day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

At the request of the claimant, I have conducted a very exhaustive review of this claim, and specifically of my recommendation of 2nd May 1955 for the disallowance of the claim for compensation for the death of the claimant's daughter, Barbara Bothwell Forbes. The claimant has submitted numerous additional materials and arguments, and particularly a declaration of her son-in-law, Mr. William Forbes, at present residing in British Guiana. Mr. Forbes declares that at the time of his marriage to Barbara Bothwell he fully realized that it would in all probability be necessary for Barbara to help her mother from his earnings if she gave up her position as librarian and became his wife. He declares that they had discussed this probability on several occasions and had planned to invite the claimant to come and live with them as soon as they were suitably located. He declares it was his wife's intention, by provision of a home or otherwise, to supplement the small pension which would be due to her mother. The intention of Mr. and Mrs. Forbes was apparently to regard their assistance to Mrs. Bothwell as a repayment of moneys spent on Barbara's education, but Mr. Forbes declares that the amount would have had no bearing on the amount of those expenditures, but would have been scaled to Mrs. Bothwell's requirements and his wife's financial competence, which would obviously have been his own financial competence.

The income of Mr. Forbes as a Mining Engineer in British Guiana appears for some reason to be confidential, but from the information available I am able to infer that his income is on a substantial scale and would be sufficient to enable his wife, had she lived, to provide financial assistance for her mother to a considerable extent. As Mrs. Bothwell's need for a supplement to her income also appears to be clearly established, I am of the opinion that in 1942 the claimant had a reasonable expectation of receiving financial benefits, either by cash contributions or by provision of board and lodging from her daughter Barbara Forbes. The value of such expectation is naturally extremely difficult to compute, as it was obviously subject to many and varied contingencies. Both the claimant and her daughter and son-in-law appear, however, to have related the expected benefits in some measure to the amounts expended by Mrs. Bothwell on her daughter's education, namely \$3,500.00. This amount would appear, in the circumstances, to have been a modest expectation of pecuniary benefits to be received by the claimant from her daughter if the latter had lived. It would, for instance, represent an annual benefit of \$350.00 per year for a period of ten years.

As I previously pointed out, the daughter would be under no legal obligation to repay those expenditures, and even if she had assumed such a specific obligation, the loss of payment of a debt would not constitute the basis of a valid claim under the War Claims Rules. In all the circumstances of the case, however, the amount of the expenditure on education may very well form an approximate estimate of the financial benefits (by way of cash or living provisions) which the daughter may have intended to provide, and the mother may have reasonably expected to receive. To that extent I would regard the claimant as having been dependent upon her daughter Barbara Forbes.

I have therefore concluded that the claimant, by the death of her daughter at the sinking of the S.S. "*Lady Hawkins*", suffered a compensable pecuniary loss, which may fairly be estimated at \$3,500.00. I would fix the estimated mesne date of the expected benefits at 1st January 1951 and would recommend that interest on the award commence from that date.

I therefore amend and supplement my recommendation of 2nd May 1955 by now recommending that the claimant be paid \$3,500.00 as an award in compensation of pecuniary loss caused by the death of her daughter Barbara

Forbes at the sinking of the SS "Lady Hawkins", such payment to be in order of Priority No. (1-2) and to bear simple interest from 1st January 1951 at 3% per annum.

Dated this 17th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2462

Re: Hainault

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has presented further argument in support of the contention that his award should be increased.

I entirely agree with the finding of the Deputy Commissioner that the claimant has not succeeded in establishing a causal connection between the amputation of his leg and alleged neglect or malpractice on the part of the German medical authorities. As the claimant says himself, "there is no way of proving that", and I find no evidence which would support a reasonable inference of such causation.

I also agree with the Deputy Commissioner's implied finding that, in view of the fact that the claimant has spent most of his time as a prisoner of war either in hospital or in hospital camps, the general presumption of maltreatment is rebutted, and therefore the general basic award is not applicable. The claimant can therefore rely only upon such specific incidents of maltreatment as he establishes in his individual case. The only such item established is a lack of such medical and nursing care as would have prevented the development of the serious bed sores with which the claimant was afflicted. I feel that the Deputy Commissioner has made a very careful examination of the whole claim, but it is naturally extremely difficult to measure the appropriate solution in dollars and cents. It must be remembered that a maltreatment award cannot be directed towards providing a claimant with compensation for pecuniary loss, or even towards supplementing a pension granted for that purpose.

On the whole, however, I have come to the conclusion that the bed sores which the claimant suffered were extremely severe, and that the neglect which caused them was extremely culpable and prolonged. I am therefore inclined to the view that the award recommended for this item of maltreatment should be increased by \$100.00.

With this variation I approve the report of the Deputy Commissioner and recommend that the claimant be paid \$300.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 17th day of March, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2463

Re: McKenney

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I note that the learned Deputy Commissioner has deducted, as satisfaction otherwise provided for, the sum of \$2,024.20, being the nominal Canadian equivalent of awards received by the claimant from the Philippine War Damage Commission. The evidence discloses, however, that those payments were subject to an exchange tax of 17%, in addition to bank charges and a number of other inevitable expenses. The actual amount received by the claimant was \$1,654.20 United States funds, which, at the average prevailing rate of exchange over the period of the payments, would be the equivalent of approximately \$1,745.00 Canadian.

In my opinion, the appropriate deduction is the net amount of satisfaction received by the claimant from the alternative source.

With this variation I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

- (a) \$1,149.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. 1(2);
- (b) \$3,391.03 as an award for loss of property in the Philippine Islands, such payment to be in orders of Priority Nos. 3(a) and 3(b) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,745.00 received from the Philippine War Damage Commission, with interest adjustment from an estimated mesne date of 15th May 1951.

Dated this 18th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2563

Re: Ferguson

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

These three claims having been consolidated, the claimants have been furnished with a copy of the Deputy Commissioner's report, and, on review, have presented further argument in support of the contention that the awards should be increased.

After carefully considering the points raised, I have, with deference, come to the conclusion that two minor changes should be made in the award.

(A) As to the wages paid by the claimant, or her husband, to one Mrs. Ross, I take the Deputy Commissioner's finding to be that, after some hesitation, he accepts the corroborated evidence of payment to Mrs. Ross at the rate of \$50.00 per month, or a total of about \$1800.00 and board, but that he considers the amount out of line with the normal wage scale of 1939-1942. Copper Cliff, however, seems to have been an area of high wages and outstanding social security benefits. A woman competent to manage a household with five small children and an invalid mother would be difficult to find and would command top wages. They were apparently paid without any assurance of recoupment from this, or any other, Fund. In the absence of rejection of the evidence as to actual payment, I would allow this disbursement in full. Owing to indefiniteness as to exact dates, the proven disbursement would seem to be \$1,700.00, in addition to \$36.00 for X-ray expenses.

(B) As to property loss, this is a case in which consolidation of three claims seems to have worked to the detriment of the claimant. As she now

states, the amount of the British Ministry award, deducted from the Commission's award, would leave a balance of \$147.00 for three people to cover money lost, jewellery, paintings, etc. (referring to items which were customarily disallowed in the computation of the *ex gratia* award).

There is no official evidence as to the apportionment of the total payment of \$1,206.00 made by the United Kingdom Government. For some obscure reason, the Custodian was not furnished by the British Government with any official statement of amounts paid as *ex gratia* awards, but had to rely on reports voluntarily made by claimants. Mrs. Ferguson at the time reported to the Custodian that she and her two daughters had each received \$400.00. This appears to have been an apportionment of her own, and it is obviously not officially correct, as it would mean that each daughter received more than the amount claimed.

The best construction I can place on the situation is that the official, or intended, apportionment was approximately *pro rata* to the respective amounts claimed. This would give each child about \$225.00, and the mother about \$758.00. I think the claimant should be given the benefit of any doubts arising from the obscurity of this situation. The British Government may have made awards on the children's claims on evidence which, though not entirely acceptable to this Commission, was considered adequate for the purpose of *ex gratia* awards. Accepting the Deputy Commissioner's finding of \$1,104.50 as the compensable value of Mrs. Ferguson's lost personalty, I would give effect to that finding by disallowing the daughters' claims as being fully compensated by the British award, and deducting from Mrs. Ferguson's claim the amount which was probably intended for her from the United Kingdom award, namely \$758.00.

With the foregoing variations, I approve the Deputy Commissioner's report, and I accordingly recommend that the claimant be paid:

(1) \$1,736.00 as an award for personal injury at the sinking of the S.S. "Athenia", such payment to be in order of Priority No. (1-2), with simple interest from 1st January 1941 at 3% per annum.

(2) \$1,104.50 as an award for loss of personal property on the same occasion, in order of priority No. 3(a), with simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$758.00 paid by the Government of the United Kingdom with interest adjustment from 2nd April 1948.

I recommend that the claims of Miss Margaret S. Ferguson and of Mrs. Kathleen Kuzniar be disallowed.

Dated this 5th day of July A. D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2609

Re: Brooks

This is a claim for maltreatment of the claimant while a prisoner of war in Europe. As the general presumption of maltreatment recognized by the Report of the Chief War Claims Commissioner has not been rebutted the claimant is entitled to the additional presumption that he has suffered consequent incapacity to work, which subsisted for some time after liberation.

I find from the evidence that the claimant was a Canadian within the meaning of the War Claims Rules at all times relevant.

I further find that the claimant, being a member of the Royal Canadian Air Force, was shot down while on operational duty over Germany on the morning

of April 9, 1942, and, later that morning, was captured by the Germans and held as a prisoner of war. On June 8, 1942 he escaped from a working party and was re-captured on or about June 19th. He again escaped on September 10, 1942 and was again re-captured on September 19, 1942. On May 10, 1943 he escaped for a third time and thereafter evaded re-capture. From that time until January 29, 1945, at his own choice, he operated with the Polish Under-ground Movement with such distinction and accomplishment as to merit and receive the Polish decorations of The Cross of Valor and the Silver Cross of Merit with Swords.

When the German Army retreated before the advancing Russian Forces the claimant declared himself to the Russians as an escaped prisoner of war. He was taken prisoner by them and placed with and treated like the German prisoners in their hands. After a check with British authorities his identification was verified and he was sent, with others, partly by foot marches totalling about 130 miles to Odessa where he contacted the British Mission and after some delay was returned to England.

In the light of the definition of "detention" as found at page 40 of the Advisory Commission there can be no doubt that the claimant was detained in enemy occupied country from the date of his capture until his surrender to the Russians. And it is my opinion that it must be held that he was further detained during the period in which his identification was being checked by the Russians through the normal channels and that such detention was inseparable from the detention commenced by the Germans. Therefore, since there is no rebuttal of the sporadic maltreatment recognized by the Report of the Chief War Claims Commissioner as occurring during imprisonment, the claimant should receive the per diem award of 20 cents for each of the 1033 days from his capture until his identity was verified by the Russians amounting to \$206.60.

I further find from the evidence that, on each occasion following recapture the claimant was placed in the hands of the Gestapo for interrogation for a part of a day. He is, therefore, entitled to an award of 80 cents for each such day or a further sum of \$1.60.

I also find that the claimant suffered unusually severe maltreatment in the following respects: After re-capture on the first escape he was slapped on the face by guards, struck with the fist and kicked while down. He was refused medical treatment for a blistered foot which later resulted in an operation to remove a gland in his left groin. He was fed only on bread and water during the first 10 of the 14 days solitary confinement to which he was subjected for escaping. After re-capture from the second escape he was slapped on the face, struck by a guard with the butt of a rifle and beaten by a Non-Commissioned Officer with a baton. And again, was fed only on bread and water during 10 of the 14 days to which he was subjected to solitary confinement for escaping. The bread and water ration must be considered the more serious because of the claimant's weakened condition resulting from the general insufficiency of the prison diet. On these general grounds I would award the claimant \$350.00.

In a written submission, the claimant urges consideration of the following additional grounds as a basis for an award of compensation:

- (a) Following the Dieppe Raid, all Air Force personnel at Lamsdorf (Stalag VIII B) were shackled for a period of approximately one month.
- (b) All P.O.W.'s at Lamsdorf were compelled to undertake various forced marches from January 1945 until their final date of liberation in March 1945.

The shackling and forced marches would have applied to me if I had remained in Lamsdorf instead of exchanging identities for the purpose of escaping.

- (c) During my various escapes and sojourns with the underground, I fully realized that I was exposed to the following possible consequences:
 - (i) If I failed my third escape, I would have been sent to a forced labor camp for punishment.
 - (ii) If I had been recaptured while a member of the Polish Underground, there is no doubt that I would have been handed over to the "Gestapo" for intense interrogations and punishments.
- (d) In the event of another war, it is possible that Prisoners of War may not attempt to carry out their duties i.e. by not escaping, if unfavourable consideration is given to World War II escapees.

I have examined the foregoing grounds and, while the claimant's record is worthy of the highest admiration and his demeanour before me was worthy of his record, I cannot find in the War Claims Rules any support for the making of an award upon these grounds as a basis. The Rules clearly embrace only maltreatment suffered at the hands of enemy authorities and they cannot be construed to apply to the sufferings undergone by those who have escaped but which were not inflicted by enemy authorities. The risk of those latter sufferings was accepted by escapees either in the hope of returning to home and freedom or in the fulfillment of their duty of escaping when possible. In neither case could the hardship and suffering endured by an escapee be charged to the unlawful conduct of the enemy.

If, in the opinion of the military authorities, the final special ground should present the danger which is claimed, a remedy could be more justly and more efficiently provided by the Department of Defense making provision that in the future Prisoners of War should be entitled to receive a monetary reward for sufferings resulting from escape.

On the grounds hereinbefore allowed I recommend that the claimant be awarded the sum of \$557.20.

Charlottetown,
March 3, 1954.

(Sgd) C. ST. CLAIR TRAINOR
Deputy Commissioner

Deputy Commissioner C. St. Clair Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. In pursuance of Rule of Procedure No. 20, I notified this claimant in writing that, on review, it might be necessary for me to recommend a reduction of the award recommended by the Deputy Commissioner. The claimant has submitted further arguments in support of the contention that the Deputy Commissioner's recommendation is not excessive.

The principal question arising in this case is whether the claimant is entitled to compensation, by way of a maltreatment award, in respect of the period during which he was an escapee. The learned Deputy Commissioner was of the opinion that, in the light of the definition of "detention" as found at page 40 of the Advisory Commissioner's Report, the claimant was detained in enemy occupied country from the date of his capture until his surrender to the Russians and through the period during which the Russians checked his identification through the normal channels, and that such detention was inseparable from the detention commenced by the Germans.

Assuming the correctness of the Deputy Commissioner's interpretation of "detention", I am impelled to hold the opinion that, if the claimant can be said to have been detained during the period of his escapes, nevertheless, the general presumption of maltreatment during those periods must be considered

to be rebutted. The essence of maltreatment is improper treatment at the hands of enemy captors. After consideration of a number of somewhat similar cases, I have with reluctance arrived at the conclusion that the basic award recommended by my report under P.C. 857 is not applicable to periods during which a prisoner of war has escaped from custody.

This conclusion would reduce the period of application of the general presumptions of maltreatment in the case of this claimant from 1033 days to about 382 days. His basic award would therefore be reduced to \$76.40, with an additional \$1.60 for Gestapo custody. The special award of \$350.00 recommended by the Deputy Commissioner for the undue punishment to which the claimant was subjected after recapture, including severe batteries, refusal of medical treatment, malnutrition in the claimant's weakened state, and other privations, does not seem to be excessive. This would bring the total award to \$428.00. The normal limit for any award over \$200.00 is \$1.00 for each day of the claimant's imprisonment but, although the Deputy Commissioner's interpretation of "detention" does not appear to me to justify a presumption of maltreatment during periods of escape, it may very well, I think, be invoked to modify the application of the usual maximum of awards. It is to be noted that the War Claims Rules, as framed by the Advisory Commissioner, do not prescribe any *per diem* maximum in the case of prisoners of war in Europe, but merely fix an upward limit of \$1400.00 for each lump sum award. I therefore consider that the full award of \$428.00 should be recommended for this claimant, and I endorse the commendation of this claimant's record and demeanour as set forth in the report of the learned Deputy Commissioner.

With the foregoing variation, I approve the report of the Deputy Commissioner and recommend that the claimant be paid \$428.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 20th day of September, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2611

Re: Bennett

...In this case the original claimant, Mr. James Bennett, died before the making of an award. The beneficiary of his estate is not shown to be a Canadian citizen, but this does not preclude the surviving of the award for the benefit of the estate; the War Claims Rules (p. 23 of Advisory Commissioner's Report) providing that if the deceased was alive at the time of presentation and was a Canadian citizen at that time, the nationality of beneficiaries should be regarded as immaterial.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that there be paid to Philip Antonio Poch as Executor of the will of the late James Bennett, \$6,447.29 as an award for loss of property by the late Mr. Bennett in Jersey, such payment to be in orders of Priority Nos. 3(a), 3(b), and 4, and to bear simple interest from 1st January 1946 at 3% per annum...

Dated this 8th day of February, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2641

Re: Denbigh

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I have, however, found it necessary to notify the claimant, under the provisions of Rule of Procedure No. 20, to the effect that I felt obliged (for the reasons set forth below) to disallow the claim for loss of property, and to reduce the maltreatment award to \$100.00. The claimant has submitted a short argument in support of the approval of the Deputy Commissioner's recommendation, but has no new materials to present.

The evidence indicates that the claimant's goods were stored in premises occupied by a Swiss firm, and that they were still in existence in 1946. The inference would seem to be that if the goods were looted or destroyed it must have been after the cessation of hostilities in 1945. In such case, the looting or destruction would not be an operation of war within the War Claims Rules.

As to the claim for maltreatment, the evidence is to the effect that the claimant was detained in a number of hotels and clubs, and that his treatment was not very bad, but that he was treated fairly well. The claimant states that he did have one beating in Kakakashi but that otherwise he was treated fairly well. In all the circumstances of the case, I do not consider that the claimant is entitled to the per diem award which is automatically recommended in cases of custody in Japanese-operated camps. Instead, I would recommend a nominal lump sum award of \$100.00.

I therefore reverse the Deputy Commissioner's recommendation to the extent of recommending that the claim for loss of property be disallowed. I also vary his recommendation on the maltreatment claim, and I recommend that the claimant be paid \$100.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 8th day of June, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2642

Re: Turner

Deputy Commissioner Francis has submitted to me his report, setting forth his recommendation for the disallowance of this claim on the ground that the claimant was not possessed of Canadian status at the time of her internment.

The learned Deputy Commissioner quite properly extracts the relevant requirements of the War Claims Rules as to national status, on the last page of his report:

"a woman who

- (a) before the relevant time was married to a man who at the time of the marriage was a Canadian; and
- (b) at the relevant time was a British subject and had been lawfully admitted to Canada for permanent residence."

I agree with the learned Deputy Commissioner that, if this Commission had to decide the question of the domicile of the Turner family at the time of

their internment, some considerable doubt might be entertained. The War Claims Rules, however, go on to provide that if any question arises in any adjudication by a Commissioner as to whether any person had Canadian domicile (in the statutory sense) at any relevant time, the question should be determined by the same authority and in a like manner as if it arose under the *Immigration Act* and the determination thereof in such manner should be final and conclusive for the purpose of the adjudication, as otherwise rulings by a Commissioner or Commissioners on a question of Canadian domicile might be made which would be inconsistent with prior or subsequent rulings of the Department of Citizenship and Immigration.

It is true that the ultimate authority for the decision of such questions under the *Immigration Act* is a Special Inquiry Officer. If, however, the officials of the Department of Citizenship and Immigration are in agreement with a claimant's contention that the claimant possessed "Canadian domicile" at a specific time, there would seem to be little purpose served by a formal hearing before a Special Inquiry Officer. I have therefore adopted "Rule of Procedure No. 49" in the following terms:

"49. If, as a result of information and opinions conveyed by the reply of the Department of Citizenship and Immigration in response to a communication made pursuant to the next preceding Rule, it appears that the records and opinion of that Department are in agreement with the contention of the claimant that he, or any person, had Canadian status at any relevant time, the fact of such Canadian status may be taken to have been established in the affirmative, and the further processing and adjudication of the claim shall continue on that basis; provided, however, that if the Chief Commissioner is of the opinion that (despite such agreement) the alleged national status has not been properly established, he may so advise the claimant and may proceed to have the question processed and adjudicated by the proper authority."

In the present case, the Department of Citizenship and Immigration has certified that the claimant's husband, William George Turner, was a British subject who had Canadian domicile at the time of his, and his wife's internment. The same department has also certified that the claimant herself was a British subject at the time of her internment, and that she had been "landed" in Canada in 1938. "Landing", as defined by the *Immigration Act*, means the lawful admission of an immigrant to Canada for permanent residence. The Departmental Legal Adviser of the Department of Citizenship and Immigration certifies that "landed" was used in that sense in the department's opinion, and it is accordingly equivalent to the expression used in qualification ((v) (b) at page 24 of the Report of the Advisory Commission on War Claims, namely, "lawfully admitted to Canada for permanent residence."

Though, as I have indicated, the husband's "Canadian domicile" at the time of the claimant's internment was perhaps open to some doubt, there is evidence to support the opinion of the Department of Citizenship and Immigration, and I cannot say that the husband's domicile has not been properly established. I therefore see no advantage in insisting that the question be referred to a Special Inquiry Officer, particularly as the claims of the husband and two children have already been adjudicated on the basis of the department's opinion.

If, therefore, the department's opinion as to the Canadian domicile of the husband at the relevant time is accepted, it is not necessary for the claimant to establish that she herself had Canadian domicile. Being a British subject by marriage, and having been lawfully admitted to Canada for permanent resi-

dence in 1938, she would automatically adopt the Canadian status of her husband. It would therefore not be necessary for her to acquire Canadian domicile in her own right.

For the foregoing reasons, it would appear that the Commission should act upon the opinion of the Department of Citizenship and Immigration, with the result that the claimant would be found to have had Canadian status, within the meaning of the War Claims Rules, at the time of her internment. It is also certified by the department that the claimant was granted a Certificate of Canadian Citizenship in 1952. She was therefore a Canadian citizen at the time of presentation of her claim.

The evidence establishes that the claimant was interned in Japanese-operated camps for a period of 854 days.

It would, perhaps, appear that there is no evidence of specific incidents of maltreatment, and that the total awards to the claimant, and to her husband and children, for the period of internment are therefore disproportionately large. The War Claims Rules, however, raise an irrebuttable presumption that each individual suffered continuous maltreatment during the period of his internment in Japanese-operated camps, and prescribe that civilian internees, whether men, women or children, should be given a maltreatment award of \$1.00 a day for the time so interned.

I therefore reverse the recommendation of the Deputy Commissioner and recommend that the claimant be paid \$854 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 6th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2643

Re: Poskitt

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review his Counsel states that it is almost impossible to obtain further evidence to establish the loss of dividends, but submits that the evidence already presented to the Commission is sufficient to found a valid claim.

On review of the maltreatment claim, I am bound to agree with the conclusion of the learned Deputy Commissioner that the claimant was mistaken as to the date of commencement of his internment at Lunghwa Camp. I have carefully checked the available records, which indicate that this camp was not opened until 14th March 1943. I am, however, prepared to give the claimant the benefit of any inference which may arise to the effect that he was interned at Lunghwa from the date of the establishment of the camp. This will increase his *per diem* maltreatment award from \$850.00 to \$886.00.

As to the claim for loss of property in the form of dividends, I agree with the opinion that the evidence adduced does not establish a valid claim. I also agree with the learned Deputy Commissioner's opinion that even if the claim were established the amount of a potential award would be almost negligible. This is a claim for loss of currency or rights to currency, and the War Claims Rules require such claims to be converted to Canadian dollars according to the rate of exchange prevailing at 30th December 1949. The difficulty and expense of procuring further evidence would hardly be justified in view of the very modest maximum award which could be granted if the claim were established.

On the whole, I see no alternative but to approve the Deputy Commissioner's disallowance of the property claim.

Dated this 29th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2644

Re: Day

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and also with a Notice, under the provisions of Rule of Procedure No. 20, of my intention to revise downward the award recommended for loss of property. The claimant has acquiesced in the proposed revision, and has waived presentation of further materials on review, with the exception of presenting a renewed argument in support of an award for loss of superannuation and pensions.

For the reasons set forth in the learned Deputy Commissioner's report, I must confirm his disallowance of this portion of the claim.

As to the amount recommended as an award for loss of property, I find that, in order to maintain uniformity of treatment as among valuations made by the several Deputy Commissioners, it is necessary to deduct a certain amount for depreciation of the value of the goods concerned. In the present case, I think that an average of twenty per cent would be an appropriate deduction for depreciation. This would reduce the capital valuation from \$1240 to \$992.

With this variation, I approve the report of the Deputy Commissioner, and I accordingly recommend that the claimant be paid \$992.00 as an award for loss of property in the Far East, such payment to be in order of Priority No. 3(a), and to bear simple interest from 1st January 1946 at three per cent per annum.

As to the learned Deputy Commissioner's notation of a claim of \$254.68 preferred by the Department of Citizenship and Immigration against this claimant, for which the claimant denies indebtedness or liability, I find that, curiously enough, this indebtedness was incurred by another man by the name of George A. Day (whose full name was George Albert Day), now deceased, and that it was erroneously associated with the file of this claimant.

Dated the 25th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2646

Re: Cools

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimants' solicitors have been furnished with a copy of the Deputy Commissioner's report and have waived presentation of further materials on review, except to submit an obviously erroneous contention regarding the rate of conversion applicable to the damages assessed by the learned Deputy Commissioner.

Mrs. Vera Cools, widow of the late Mr. Cools and executrix of his last will and testament, was the original claimant in this case. In the interval which has elapsed since the report of the Deputy Commissioner, Mrs. Cools has died and on 13th April 1956 Letters of Administration de bonis non of Mr. Cools' estate were granted by the Supreme Court of British Columbia to the present claimants, the above named administratrices.

I have carefully reviewed the report of the learned Deputy Commissioner and I am not disposed to disturb his findings as to the title and damage to the property claimed to have been owned by the late Mr. Cools.

According to the provisions of Mr. Cools' will, the undivided one-third interest in his estate to which his wife became entitled was to become part of her estate and was to be subject to any testamentary disposition by her. Since, however, the claim was originally presented by Mrs. Cools in her own lifetime, it is not necessary to record any finding as to the identity or national status of the beneficiaries of her estate. Any award which is made may properly be paid to the present personal representatives of Mr. Cools for distribution in due course of law.

As I have mentioned above, the claimants' solicitors have raised a question as to the proper rate of conversion of the proposed award, which the learned Deputy Commissioner estimated as 42,893.20 Belgian francs. As the damage to Mr. Cools' property took place in 1940-1944, I consider it equitable to convert the amount of the loss into Canadian currency at the rate of exchange prevailing on 30th June 1939, there apparently being relatively little variation in the rate of exchange during the war years. I also consider that the award should bear interest from 1st January 1946.

With the foregoing variation, I approve the report of the Deputy Commissioner.

I therefore recommend that there be paid to Evelyn Marie Charlotte Alexandra Middleton and Adrienne Elizabeth Vera Josephine Cools as Administratrices of the Estate of Joseph Marie Charles Auguste Corneille Cools deceased the sum of \$1,462.65 as an award for damage to property of the late Mr. Cools in Belgium, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Review of this claim has been held up for a very considerable period owing to a doubt as to whether a claim had been validly presented to, or would be accepted by, the Belgian authorities. Owing to various misunderstandings and delays that doubt still remains unresolved. Obviously, however, this is a case in which payment in respect of the claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am accordingly of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)), to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Dated this 30th day of April, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2773

Re: Anderson

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted additional arguments in support of the contention that his award should be increased.

The history of this claimant's experiences as a prisoner of war is considerably different from the average. He was never subjected to shackling, or to forced "hunger march", or to forced labour in the mines, which are three of the most usual incidents of maltreatment to be found in the claims of prisoners of war in Europe.

Probably the reason why this claimant did not undergo forced labour or forced marches was that he was physically incapacitated after his experience in Fresnes Prison. He was there, in the direct custody of the Gestapo and of the SS, for a period of 74 days. It appears, however, that the severity and violence of his treatment during that period was out of proportion to the number of days involved. Inadequate food, unsanitary conditions, frequent interrogations, numerous beatings—these were some of the incidents of his unfortunate sojourn at Fresnes. On one occasion, in the course of a beating, he was struck on the left side of his head, with a pistol, or some such object, and was knocked unconscious.

On review, it has been possible to secure additional official corroboration of the claimant's account, and his medical records corroborate his statement that the effects of his diets and beatings in Fresnes Prison persisted for some time after his liberation.

Though a maltreatment award is intended to be a moderate personal solatium, and cannot be regarded as compensation for pecuniary loss, I have concluded that the unusual brutality of this claimant's treatment by the Gestapo and the SS entitle him to an additional award, which I would fix at \$126.00.

With this variation, I approve the report of the Deputy Commissioner and accordingly recommend that the claimant be paid \$330.40 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 8th day of April, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2794

Re: Anderson

On 8th June 1954 I made a recommendation in this case, approving the report of Deputy Commissioner Hyndman and recommending payment of the amount thereby awarded.

The award recommended by the learned Deputy Commissioner included \$330.00 for eleven weeks' loss of wages by the late Daniel Anderson, Senior, due to delay in returning to Canada caused by the sinking of the S.S. "*Athenia*".

It was subsequently brought to my attention, through a communication received from the British Ministry of Transport and Civil Aviation, that no avoidable delay occurred in repatriating Canadians who had been passengers on the "*Athenia*", and that the records of the Donaldson Line Limited indicated that Daniel Anderson, Senior, left the United Kingdom in the SS "*Duchess of York*" on 16th September 1939, only eleven days after arrival back in Glasgow.

Under the provisions of Rule of Procedure No. 20, I notified Mrs. Janet Anderson of this information, and informed her that if it were correct there would be no basis for the allowance of eleven weeks' loss of wages due to the delay in returning to Canada. Unfortunately Mrs. Anderson was at that time seriously ill, but my notice came to the attention of her son, the present claimant William R. Anderson. The present claimants have not submitted any information to contradict that furnished by the British Ministry, and I am therefore bound to accept it as accurate, particularly in view of the apparent vagueness of the evidence tendered on this point before the Deputy Commissioner. It would, however, appear that the claimant did lose approximately two weeks' work, and that his employer, the City of Toronto, made some deduction from his wages on that account. The Commission has allowed loss of wages up to two weeks in similar cases, and I would therefore reduce this item from \$330.00, as allowed by the Deputy Commissioner, to \$60.00 representing two weeks' loss of wages.

Mrs. Janet Anderson has recently died, and by her will appointed her sons William R. Anderson and Daniel Anderson as her executors. Her sons are also sole beneficiaries under her will. Both are presumably Canadians, though this is not strictly necessary, as the claim was originally presented by Mrs. Anderson in her lifetime.

I therefore amend my report of 8th June 1954 accordingly, and I now recommend that the claimants William R. Anderson and Daniel Anderson, as Executors of the will of Janet Anderson, deceased, be paid \$525.00 as an award for loss of personal property and wages by the late Daniel Anderson, senior, caused by the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3 (a) and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$402.00 received from the Government of the United Kingdom, with interest adjustment thereon from 17th November 1947.

Dated this 19th day of January, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2892

Re: Stevenson

This is a claim for maltreatment of the claimant, N4-798681, W.O. (1st. Class) W. J. D. Stevenson, R.A.F., while a prisoner of war in Europe. As the general presumption of the fact of maltreatment recognized by the Report of the Chief War Claims Commissioner has not been rebutted, the claimant is entitled to the additional presumption that he suffered consequent incapacity to work, which subsisted for some period or time after liberation.

I find from the evidence that the claimant was a Canadian within the meaning of the War Claims Rules at all relevant times and that the claimant was in custody a total of 610 days. He was transported by box-car on one occasion. He was in the direct custody of the Gestapo a total of 3 days. He was forced to participate in a "hunger march" of early 1945 for about 27 days after a preceding period of severe malnutrition.

In all the circumstances of the case I recommend that the claimant be awarded \$216.00.

Dated the 19th day of February A.D. 1954.

(Sgd) C. W. MARION
Deputy Commissioner

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further argument in support of the contention that his award should be increased.

The greater part of the present submissions, as the claimant himself emphasizes, have to deal with those privations and incidents of maltreatment which were the common lot of prisoners of war in Europe, and which therefore have been taken into full consideration in the fixing of the amount recommended by the Deputy Commissioner. The award is therefore, generally, in line with those recommended for other prisoners of war who were in custody for a comparable period.

It does, however, appear that the claimant was in some respects subjected to incidents of maltreatment which were not common to all the prisoners of war in Europe, and it is on those incidents that the claimant must rely for any increased award. He gives evidence of being pushed into a sweatbox by the SS for not giving information; as he was weakened from an injury at the time, the result was that he was unconscious when he "fell out". He also refers to an occasion on which the bedding of the prisoners was taken from them in reprisal for alleged cruelty to German soldiers in Africa. As my Report on the Reference under P.C. 1953-857 indicates this is one of the items of sporadic maltreatment which was taken into consideration in the recommendation of a basic award. The same may be said of exposure to severe cold by being kept on parade for unreasonable periods during bad weather, and the intermittent reduction of rations provided by the German captors. The sporadic and intermittent nature of maltreatment of prisoners of war in Europe is well illustrated in this case by the account given in the claimant's narrative of the occasion when a German guard saved the claimant's life at the expense of his own.

On a whole review of this case, I am inclined to the conclusion that the claimant encountered unusually severe treatment at various stages of his imprisonment, and that he was treated with particular brutality on the occasion when he was put in the sweatbox while in a weakened condition owing to his recent injury. I would recommend an additional award of \$100.00.

With this variation, I approve the report of the Deputy Commissioner, and recommend that the claimant be paid \$316.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 6th day of April, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2901

Re: St. Pierre

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

On review of the Deputy Commissioner's recommendation, I am of the opinion that the award recommended by him is actually an award for personal

injury, and as such is not properly combined with a maltreatment award. The basis of a personal injury award is pecuniary loss, whereas the basis of a maltreatment award is personal solatium. The former bears interest; the latter does not.

For these reasons I would separate the maltreatment and personal injury claims in this case. I would approve the award recommended by the Deputy Commissioner as an award for personal injury and, on the analogy of other cases of somewhat similar nature, I would recommend for the claimant a nominal award of \$300.00 for maltreatment.

With the foregoing variations of the Deputy Commissioner's report, I therefore recommend that the claimant be paid:

- (a) \$300.00 as an award for maltreatment of himself whilst a civilian internee in Europe, such payment to be in order of Priority No. (1-2);
- (b) \$635.00 as an award for personal injury resulting from such maltreatment, such payment to be in order of Priority No. (1-2) and to bear simple interest from an estimated mesne date of 1st July 1948.

Dated this 14th day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2908

Re: Gagnon

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant particularly stresses the loss of a chest and contents which he now values at \$900.00.

I agree with the conclusion of the learned Deputy Commissioner that the loss of contents to this value has not been established. The only item which is clearly shown to have been in the lost chest is a portion of the item of linen originally valued at \$75.00, which was said to have been in two different chests. I think it might safely be inferred that, say, \$40.00 of this linen was in the chest when it was taken away by the Germans.

The claimant also stresses the loss which he made through having to dispose of his belongings in a hurry, and at great sacrifice due to prices prevailing from war time conditions, and due to depreciation of the French franc. This includes his automobile, which he states was disposed of with perfect honesty by its custodian Mrs. Borda. These are, of course, considerations which arise from the existence of a state of war, and not directly from operations of war. The Commission has therefore no jurisdiction to award compensation for such losses. But it is stated, however, that the reason for Mrs. Borda's sale of the automobile was that the Germans had seized five new tires with which the vehicle had been recently equipped, and she feared that the automobile would similarly be seized in the near future. In all the circumstances, I am inclined to give the claimant the benefit of the doubt on this question and to recommend an award of, say, \$100.00 for the loss of the tires.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$240.00 as an award for loss of property in France, such payment to be in order of Priority No. 3(a), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 11th day of February, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 2991

Re: Richards

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

I have also had the opportunity of reading the evidence given by this claimant at the War Crimes trial of Major General Kurt Meyer. This evidence substantiates the testimony given by the claimant in the present case to the effect that he was not wounded before his capture, but was shot through the left lung by a trigger-happy guard after he had surrendered. The claimant's evidence in the Kurt Meyer case is to the effect that, pursuant to gestured commands by the guard, he discarded his tin helmet, put his hands behind his head, and started to walk in the direction where the other prisoners had been ordered. When he had gone about thirty yards beyond the guard, the guard shot him with his rifle, and when he fell and looked around the guard still had his rifle pointed at him. This shooting incident was apparently done without the approval of the German officer in charge and, though the reason for the shooting is obscure, it was probably done because the claimant did not carry out some order given in German, which, in the confusion, he failed to understand. The evidence in the Meyer trial does not substantiate the claimant's present claim that he was made to walk two miles without assistance, but apparently it is true that he did not have any medical treatment except the field dressing until the next day.

In all the circumstances of the case, I think that the claimant is entitled to a nominal maltreatment award of \$200.00.

I therefore reverse the recommendation of the Deputy Commissioner and recommend that the claimant be paid \$200.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 28th day of March, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3034

Re: Webster & Sons Limited (Montreal)

Deputy Commissioner Choquette has submitted to me his report and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

The claimant has also been notified, under the provisions of Rule of Procedure No. 20, of a slight downward revision of the award, which I have considered necessary for the following reasons:

The Deputy Commissioner, in accordance with the provisions of the War Claims Rules, established the dollar value of the lost goods by a conversion as of 30th June 1939. As a general rule, that is the best available estimate of the Canadian dollar value of the goods. In the present case, however, the lost goods were shipped from Glasgow on 28th or 29th August 1939, and at that date were invoiced at £161.5.0. It seems to me that the claimant is given undue advantage of the method of conversion prescribed by the Rules if his goods are valued at the end of August and the rate of exchange of the 30th June is applied. The valuation and conversion rates should be reduced to approximately the same date. This object is most readily achieved by converting the invoiced value at the prevailing exchange rate of 5th September 1939, which would give a figure of \$717.97. I may add that the claimant was given the opportunity of establishing a higher cost value at the time of shipment, but was satisfied with the figures which I have cited.

No question of insurance, or of compensation otherwise provided, arises in this case. Regular marine insurance would not cover the loss, and the shipper would not be expected to carry War Risk Insurance on goods consigned before the outbreak of hostilities.

With the foregoing variation, I approve the report of the Deputy Commissioner and I accordingly recommend that the claimant be paid \$717.97 as an award for loss of personal property at the sinking of the SS "Athenia", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 28th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3053

Re: King

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further arguments in support of the contention that his award should be increased.

He stresses particularly the great pain, anguish, suffering and discomfort which he underwent in prison camp as the result of five operations. The claimant undoubtedly underwent a great deal of suffering. Part of it, however, was due to wounds sustained before his capture at Dieppe, and there is no evidence that those wounds were aggravated by improper treatment. The remainder of his suffering was consequent on a wound in the left shoulder sustained through the fact that he was shot by a guard during an attempted escape or disturbance in the prison camp on 13th February 1943.

It is impossible to determine whether this shot was a culpable assault or culpable neglect on the part of the guard, or whether it was a reasonably justifiable measure in the preventing of an escape or the quelling of a disturbance. It does appear, however, that the detention of this prisoner for 15 weeks in a stone quarry awaiting court martial, with extremely poor rations and quarters, and deprivation of Red Cross parcels, was, in view of his physical condition at the time, unjustifiably severe treatment. The claimant appears to

have been given very little opportunity to recover from the numerous operations which he underwent, and his experiences in the stone quarry and salt mines, as well as subsequent extreme hardships, appear to have caused considerable loss of weight and a seriously run down condition. There is also evidence that, in addition to the three incidents of box car transportation mentioned by the Deputy Commissioner, the claimant was transported by lime car from Dieppe to Rouen Hospital (19-21 August 1942) with resulting discomfort, burns and irritation of wounds.

Although a maltreatment award cannot be directed towards furnishing pecuniary compensation, or even towards supplementing a pension granted for that purpose, I believe that the extreme privations inflicted on the claimant in the stone quarry and elsewhere entitle him to an additional nominal award of \$50.00.

With this variation, I approve the Deputy Commissioner's report, and recommend that the claimant be paid \$478.80 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 5th day of April, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3061

Re: La Congregation de Saint-Dominique du Tiers-Ordre enseignant

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted an argument in support of the contention that the Deputy Commissioner's recommendation should be reversed and an award granted.

The present argument of the claimant may be summarized as follows:

1. Though the legal title to the property lost or damaged was not vested in the claimant at the time of loss, the claimant had an interest akin to an equitable ownership, which should entitle it to compensation for the loss incurred.

2. That, although the claimant had failed to institute a claim for compensation under the Treaty of Peace with Japan, it should nevertheless receive partial compensation for the loss from the War Claims Fund, to represent the deficiency in compensation which might have been received under the Japanese Treaty.

As to the latter of these arguments, the claimant admits that it voluntarily abstained from making any claims against the Government of Japan, on specific instructions of the Papal Delegate to Japan. Obviously, under such circumstances, this Commission would be bound to deduct the sum which might by reasonable diligence have been secured as an award under the Japanese Peace Treaty. The experience of the Commission is that, with a few unusual exceptions, an award under the Japanese Peace Treaty (based as it is on replacement cost in 1956) is more than sufficient to include the capital award for the corresponding loss which might be made under the War Claims Rules, as well as interest on the latter award for the intervening period between 1st January 1946 and the date of the Japanese payment. The only two exceptions recognized by the Commission are: (a) the case of commodities whose market value

diminished between 1941 and 1956; (b) the case of small claims for articles of purely personal nature, where certain difficulties of proof, expenses, and other contingencies might militate against the securing of full compensation under the Japanese Treaty.

The present case does not appear to fall within either of the foregoing exceptions, but in view of the conclusion which I have reached on the claimant's argument under Heading No. 1, it is unnecessary to examine argument No. 2 in greater detail.

On the question of the title to the property, the evidence makes it clear that the title was vested not in the claimant, but in a resident Bishop, representing the Roman Catholic Episcopal Corporation of the diocese where the property was located. In this manner numerous properties used and occupied by the claimant and other groups of Dominican missionaries from various countries and of various nationalities were pooled as to title and ownership. The claimant, being the Canadian Order of Dominicans, had made substantial monetary contributions towards the Mother Congregation of the Dominicans in France for the purpose of building up and maintaining missionary properties and carrying on missionary enterprises. It is evident, however, that such contributions were not earmarked for acquisition of ownership in the property here concerned or in any specific property. I therefore feel bound to agree with the conclusion of the learned Deputy Commissioner that the claimant had no title, legal or equitable, in the property which was lost or damaged in Japan, and that it therefore cannot be said to have suffered any pecuniary or compensable loss.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, and I therefore recommend that this claim be disallowed.

Dated this 28th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3066

Re: Watson

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further arguments in support of the contention that his award should be increased.

He stresses particularly the smallness of his award in relation to the very long term during which he was a prisoner. Admittedly, the award to this claimant is somewhat less than the average recommended for other claimants who were in custody for a comparable period. I find, however, that there is in this case no evidence of many of those incidents of maltreatment which go to make up a substantial part of awards to many prisoners: such as, shackling, custody by criminal organizations, brutality during interrogations, or forced labour in underground mines or on other working parties. This claimant was transported only once by box-car, and on that occasion for only parts of two days, as compared with the experiences of other prisoners on trips which lasted many days or even weeks. His hunger march, though apparently severe, lasted for only about 8 days, as compared with 90 days in the case of numerous prisoners.

For obvious reasons, hardships sustained while in custody of the Russian "liberators" cannot be taken into account in assessing a maltreatment award, the essential basis of which is misconduct by enemy captors.

After a very careful review of this claim, I am not able to find any evidence on the record, at least, which would justify an increase in the recommended award.

I therefore approve the report of the Deputy Commissioner without variation, and I recommend that the claimant be paid \$289.60 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 22nd day of April, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3089

Re: Olsen

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I find, however, that this prisoner was unjustifiably subjected to 42 days in a punishment dungeon, with no light and a bare subsistence diet, for his refusal to work in German workshops which were producing war machines. For this item I would allow him an additional award of \$33.60.

With this variation, I approve the Deputy Commissioner's report, and recommend that the claimant be paid \$430.80 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 4th day of May, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3106

Re: Les Clercs de Saint-Viateur

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review, though Counsel refers particularly to the alleged total absence of success of appeals. The records of the Commission will indicate that all reports by Deputy Commissioners have been very carefully reviewed, and that they have very frequently been revised for the benefit of claimants whether, or not, appeals have been lodged.

In the present case, I have very carefully reviewed the learned Deputy Commissioner's report, but do not find any materials which would warrant an upward revision of the awards which he recommends.

As to the claim for extortion of currency, the learned Deputy Commissioner has accepted the claimant's testimony at its face value, and has recommend-

ed an award of the maximum sum available under the War Claims Rules. It is, I think, arguable that the total loss sustained under this head was due to the devaluation of currency, on the ground that the currency in use in Manchuria before and during the war was declared valueless in 1946, and that the 1949 currency was an entirely new one bearing no relation to the money which the claimant lost. I am, however, prepared to give the claimant the benefit of the doubt on this point, and to agree with the learned Deputy Commissioner that the claimant should be compensated at the rate of exchange prevailing at 30th December 1949, which is laid down by the War Claims Rules as the basis for conversion of claims arising from the loss of currency or rights to currency.

As to the claims for damage to buildings and contents, replacement of furniture, and loss of library, I am inclined to the view that the awards recommended by the learned Deputy Commissioner may be unduly high, particularly as there is an element of uncertainty regarding the dates of part of the damage incurred. Some portion of the damage may very well have been caused after the termination of World War II. It appears, however, that the learned Deputy Commissioner has adopted the correct principle in arriving at his findings, and I am therefore not disposed to disturb the quantitative estimate which he places on the actual war losses.

I therefore approve the Deputy Commissioner's report without variation, and I recommend that the claimant be paid \$6,039.72 as an award for loss of property in Manchuria, such payment to be in orders of Priority Nos. 3(a), 3(b), and 4(a), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 10th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3168

Re: Chan

The claimant, who is a duly qualified physician and surgeon now practising his profession in Vancouver, B.C., appeared in person before me at Victoria, B.C., on March 29, 1954, and again at Vancouver on June 14, 1954, represented by George Gregory, Esq., M.L.A., as his Counsel. He gave evidence in support of the claims of himself, his wife, and the two infant children later mentioned, for maltreatment and his own further claim for loss of personal property.

The claimant was born in Victoria, B.C., as appears from a certificate showing his birth there as of June 9, 1894, issued by the Department of Vital Statistics of the Government of British Columbia. The claimant also produced British Passport C46310 dated March 18, 1938 at Tsingtao, China.

The case summary shows that the claimant and his wife were Canadian citizens at all relevant times under the provisions of Section 4 (a) of the Canadian Citizenship Act. I am satisfied that claimant was a Canadian citizen as at the date of his internment later mentioned.

On August 26, 1926, the claimant married his present wife, May Lee, (*Case No. 2434*). Marriage certificate was produced on the hearing. His wife is also a Canadian citizen, born in Canada, as appears by her birth certificate issued by the Department of Vital Statistics of the Government of British Columbia which was produced on the hearing. Two children were born to the claimant and his said wife, i.e. Eugene John (*Case 2427*) and Guy Hugh, Jr. (*Case 2428*), both born in China. The children are deemed to be Canadian citizens under Section 4(1)(b) of the Canadian Citizenship Act.

The claimant and his wife left Canada for China in 1927. He carried on a medical practice at Shanghai and was also engaged as a professor in medicine at the Central University, Shanghai, until August 13, 1937. On the latter date he was compelled to leave Shanghai with his family due to the outbreak of the 1937 Sino-Japanese War. He then established himself in Tsingtao, commenced the practice of medicine and established a private Hospital on Kiangsu Road. He was also engaged there as medical officer of the British American Tobacco Company and for the Chinese Maritime Commission.

The claimant, his wife, and the two infant children before mentioned were interned by Japanese troops when Tsingtao was occupied by those forces in October 1942. The claimant testified that his family and himself were confined in Japanese operated internment camps at Iltis, Hydro Hotel, at Iltis Huk, Tsingtao, from about October 27, 1942 to March 20, 1943, when they were transferred to the concentration camp at Weishien, Shantung Province, North China, where they remained until released on or about September 25, 1945.

The fact of the internment of the claimant and his family between October 27, 1942 and August 18, 1945, i.e. 1025 days is confirmed by despatch #86 from Washington, D.C., dated January 13, 1944. It has been established by official sources that the Tsingtao and Weishien camps were under direct control or operation by Japanese troops. The same sources disclose that liberation of persons interned in Weishien were liberated on or about August 18, 1945.

On the evidence adduced before me together with information from official sources it is sufficiently established, in my opinion, that claimant, his wife, and the two infant children before mentioned are each entitled to an award of compensation at the rate of \$1.00 per day for 1025 days respectively.

I therefore recommend payment to the claimant of the sum of \$1025.00.

As to the claim for loss of personal property—the claimant was given leave to amend this branch of his claim by substituting for the figures \$18,505.00 set out on page 5 line 1 of his affidavit sworn October 5, 1953, the figures \$41,168.00, since the first mentioned figures were carried into the summary on page 5 of the said affidavit in error as is evident from examination of the total shown at the bottom of page 3 of the list attached to the said affidavit.

The claimant seeks to recover compensation out of the War Claims fund for property lost under the following heads:

1. Loss of medical and hospital equipment, etc. at Tsingtao . . .	\$41,168.00	U.S.
2. Lost from Yokohama Specie Bank Safety Deposit Box	28.00	Can.
3. One-half value of personal effects, etc. lost from Kiangwan, Shanghai, premises	7,500.00	U.S.
4. Loss of rent of said premises	3,450.00	U.S.
5. Cost of repairs to Kiangwan premises, one-half of damage ..	803.50	U.S.
6. Loss of value of services rendered as physician at concentration camps (estimated)	3,000.00	U.S.
7. Loss of practice between October 27, 1942 and September 25, 1945	34,565.00	U.S.
Total	<u>\$90,514.50</u>	

He alleges loss sustained to amount to the several sums shown opposite each head of the claim, a total sum of \$90,514.50.

It is perhaps convenient that I should first examine heads 3 to 7 inclusive of the claim, since, in my opinion, the losses alleged to have been sustained thereunder, with one possible exception, are not compensable under the Rules prescribed.

Head 3 relates to alleged loss of personal effects at the claimant's residence in Shanghai, China. He testified that he did not know whether these premises

were looted before or after December 7, 1941, and therefore attributed one-half the loss only to the period subsequent thereto. In the absence of any evidence that this loss was sustained subsequent to December 7, 1941, and in view of the apparent probability that it was sustained in the period between September 1937 and December 7, 1941, being the currency of the Sino-Japanese War, (indeed there is evidence from which it would appear that the premises had been severely damaged prior to April 1938—transcript page 19—the evidence of the claimant's wife who visited the premises twice in 1938 and testified to the damaged condition thereof at that time) I think this branch of the claim must be rejected in terms of the ruling made by Ilsley, C. J., in the Report of the Advisory Commission, page 19, paragraphs 1 and 2.

The claim under Head 4 for loss of rent of the Shanghai residence, I think, must likewise be rejected since there is no evidence that rentals of these premises were collected by enemy authorities and withheld from the claimant—see Report of Ilsley, C. J., *supra* page 63 paragraph 3.

The claim under Head 5 is supported by the testimony of the claimant as well as by a letter received by him from his nephew, Chan Hong, written from Shanghai dated October 11, 1947 and filed as Exhibit 3 on the hearing. It appears therefrom that Hong returned to the claimant's Shanghai residence on October 3, 1945 and found that substantial damage had been done to the house. He undertook repairs at a cost of \$1700.00 U.S. The claimant testified that he had paid this sum to his nephew. He claimed to recover one-half the sum paid since he assumed that one-half the damage may have been done after the outbreak of war in December 1941. In the absence of evidence that the damage was done subsequent to the latter date, and in view of the testimony of the claimant's wife, before mentioned, I consider that this claim must be rejected for the reasons given for rejection of the claim made under Head No. 3.

Claimant under Head 6 claims for services rendered as a physician to fellow internees in the internment camps and to Japanese troops serving therein. This claim, in my view, falls within the ruling made by Ilsley, C. J., at page 69, paragraph 28 of the Advisory Report except as to the value of medicines supplied to others in those camps. I consider that pursuant to the said ruling the claim must be rejected insofar as it relates to medical services furnished by the claimant.

I think there can be no doubt that the claimant did in fact furnish invaluable medical services to many of the internees in these camps as appears from a letter signed by a fellow internee, Jean-Paul Dallaire, S.J., dated at Montreal, March 2, 1946, and a memorial signed by 15 fellow internees, both of which documents are filed with the Commission. Confirmation is also to be found therein of the claimant's testimony (transcript pages 9 and 10) that he had brought to the interment camp from his hospital in Tsingtao both by himself and by Japanese guards, medicines to the value of \$1905.25 which he used in the treatment of internees in the camp, a list whereof is included in Exhibit 8 as well as in the list attached to claimant's affidavit sworn November 22, 1953, and filed. Included in Exhibit 8 is a series of entries, made by the claimant at the time and filed with the camp executive, of treatments furnished by him to internees in the said camps between October 1942 and January 1943, from which it appears that many persons were treated by him and medicines furnished to them.

There is in addition a certificate from R. H. Eckford, Acting-Consul General, British Consulate General, Tsingtao, under date 24 December 1947, in which the writer says:

"At the Iltis Huk Camp, Tsingtao, and Weihsien Camp internees received excellent attention, and even drugs and medicines from the bearer, Dr. G. H. Chan.

...I speak from my own knowledge and experience, and confirm his loyalty and readiness in giving his services during the period October 1942—September 1945.

“R. H. Eckford”

Although I consider that the ruling found at page 69, paragraph 28 denies me jurisdiction to recommend payment for medical services, I do not think that this ruling extends to bar a recommendation for payment of compensation to the claimant for drugs supplied to internees. I accept the claimant's testimony, confirmed as before noted, as to the fact that he did supply drugs to that value. It is to be observed that no claim is made for loss of drugs to the value of \$1905.25 in the list of contents of the hospital. I examined the claimant on the omission of this item (transcript of June 14, 1954, pages 5 and 6) and could get no satisfactory explanation. On further consideration I have reached the conclusion that these drugs were not listed with the hospital contents because of the fact that they were removed from the hospital at or soon after the claimant was arrested or interned and before he made up the list. In the circumstances I recommend payment of the sum of \$1905.25 on the basis of a loss to the claimant of personal property to that value occasioned by enemy action, since necessary drugs were not provided by Japanese camp authorities.

The claim made under Head 7, in my opinion, falls within the ruling made by Ilsley, C.J., at page 63 paragraph 5 of the Advisory Report and therefore must be rejected.

The claim made under Head 1 relates to the loss by the claimant of medical and hospital equipment kept by him in a hospital and residence maintained by him in Tsingtao.

The claimant testified, see declaration made by him April 23, 1946, that Japanese forces confiscated his home and personal effects at Kiangwan, Shanghai, on August 13, 1937, in consequence of which he left for Tsingtao. I conclude from his testimony, both by declarations filed and by his oral testimony on the hearing, particularly transcript of June 14, 1954, page 1, that he did not remove any personal effects in the nature of medical equipment.

In January 1938 the claimant set up a medical practice at Tsingtao, where he acted as medical officer for employees of the British-American Tobacco Co. as well as the Maritime Customs authority. He then bought as a going concern a private hospital which had a capacity of 24 beds theretofore operated by Dr. Lao. The purchase price of the hospital and equipment was \$2000.00 gold. He operated the hospital continuously thereafter until October 27, 1942. He says in the affidavit made April 23, 1946, that upon his arrest by Japanese forces on the latter date “everything in my home and my hospital was carried off by the Japanese”. Again in a letter written by claimant to his solicitor, J. B. Clearihue, K.C., under date December 15, 1947, on the Commission file, claimant says the loss in Tsingtao represented articles accumulated since 1938. “It was necessary for me to maintain a hospital in that part for the employees of the British-American Tobacco Factory with an employment role of several thousand workers, and the Chinese Maritime Custom Service with a staff no less inferior in number. Furthermore the American Asiatic Fleet spent its summer there for the past fifteen or twenty years and my hospital was a popular sick bay for the naval personnels on shore leaves.”

The claimant testified before me that the Japanese Naval forces took possession of the hospital on October 27, 1942, and “carried everything away in their trucks”. He says that he did not subsequently recover the hospital equipment and instruments. “Everything was gone”.—transcript page 7.

I accept the claimant's testimony as to the loss of the contents of the hospital through enemy action.

There is ample evidence to support claimant's testimony as to the maintenance of the hospital at Tsingtao between January 1938 and October 1942 found in declarations of Mrs. Dina Messe made the 9th of April 1954, and Arthur Zimmerman, made 13th of April 1954; and certificate of Professor C. P. Chung taken before the Acting British Consul General at Tsingtao, 26 November 1947.

There is, however, no confirmation as to the claimant's testimony regarding the contents of the hospital nor as to the value thereof.

I am, however, satisfied on the evidence before me that the claimant did operate a 24 bed hospital at Tsingtao during the period before mentioned. I consider that it is reasonable to assume that the hospital was sufficiently equipped to permit of its operation as a private hospital. The problem presented for my consideration is one of considerable difficulty in determining the extent of the equipment on the premises and the value thereof.

It is, I think, evident from the claimant's testimony before recited that the hospital consisted of a clinic at the time of his purchase and I accept his testimony that approximately 40% of the equipment, the subject of the claim, was bought by him from Dr. Lao in December 1937 or January 1938.

The claimant testified that he did not in the period December 1937 to October 1942 transfer to Tsingtao any of his financial assets left in Shanghai in 1937. During the foregoing period he received from the two organizations before mentioned \$200.00 and \$300.00 gold respectively per month, that is to say \$2400.00 and \$3600.00 per annum, a total of \$6,000.00. He says that he earned in 1938 an additional \$4,000.00 from his private practice and the operation of the hospital. That he earned from the same sources in each of the years 1939, 1940 and 1941 from \$10,000.00 to \$12,000.00 gold annually. That in 1942 until his internment he earned substantially less than in the preceding years due to the very unsettled conditions prevailing and the fact that he was then under house arrest though permitted to continue his practice to a limited extent. Assuming the estimate thus made of his income to be reasonably accurate, his aggregate earnings in Tsingtao will not have exceeded, in my opinion, \$50,000.00, out of which sum he will have had to maintain himself, his wife, and two children. He says that he had in his possession when Japanese troops occupied the hospital in October 1942 jewelry and U.S. currency notes to the value of \$12,000.00, and medical and hospital equipment and household goods having a market value of \$29,168.00. Although I regard the claimant as a credible witness, I consider that it is highly improbable that he will have been able to save from his income during that period a sum in excess of \$40,000.00. I think it is not unreasonable to estimate that the cost of maintaining his family and himself during that period of close to five years will not have been less than \$4,000.00 per annum or a total of \$20,000.00. If that assumption be valid, the claimant will not have had available for such investments more than \$30,000.00.

The claimant testified that he prepared an inventory of the contents of the hospital on December 8, 1941, which was checked and approved by Japanese officials (see transcript page 11). He verified the values shown in the list of hospital equipment, etc., attached to Exhibit 1 as cost to him when purchased during that period and says that the cost was less than the market value in June 1941. I have no reason to disbelieve the claimant's testimony as to possession of the majority of the articles enumerated, but consider that the estimate of market value of the items of medical and hospital supplies is excessive.

The claim for \$12,000.00 for jewelry and U.S. currency notes set out on page 3 of the list attached to Exhibit 1, I think, must be rejected since there is no corroboration of the fact of possession nor of the value thereof as required by the Rules.

Some confirmation is to be found for the possession of equipment such as is enumerated in this list in an affidavit sworn by Charles J. Prevost, Manager at Vancouver, B.C., of B.C. Stevens Co. Ltd., dealer in surgical instruments, supplies and hospital equipment, etc. The deponent testifies that in his opinion:

"The equipment is reasonable for a small private hospital of twenty-five beds subject to the following comment:

5. I do not think that such a small hospital would require so many of the several items therein noted as are set out in the said lists."

I therefore would consider that some deduction must be made of the items of that nature contained in the list "Operating Room Set-up".

Since I have reached the conclusion, for the reasons expressed, that the claimant did not have available for investment in the items enumerated in the property claim more than \$30,000.00, it follows that the aggregate cost to him of these articles will not have exceeded that sum. Since all articles the subject of the claim were bought in and subsequent to 1938, when such articles were in short supply in North China, I think the cost price to the claimant will have been reasonably equivalent to fair market value of the goods lost. Taking into account the item of \$12,000.00 disallowed, some deduction for excess instruments listed under "Operating Room Set-up", as well as in respect of the claims of \$4,500.00 and \$1,000.00 respectively for medical library, hospital records, X-ray volumes and records, I consider that substantial justice will be done in respect of this branch of the claim if the market value of the property so lost is assessed at \$15,000.00.

Referring now to Head 2 on Page 3 of this report, the claimant testified that Japanese officials removed from his safety deposit box in Yokohama Specie Bank the sum of \$28.00 Canadian funds. I accept his testimony in this regard and recommend payment of compensation in the sum of \$28.00 in respect thereof.

Recognizing that the recommendations which I am about to make present a somewhat summary approach to evaluation of the medical and hospital equipment, nevertheless, in view of the factors before enumerated, I consider, as before stated, that substantial justice is done by a recommendation that payment be made of \$15,000.00 in respect of the property claim.

To summarize I recommend payment as follows:

For maltreatment	\$ 1,025.00
For loss of drugs	1,905.25
For property loss	15,000.00
For loss of Canadian currency	28.00
	<hr/>
	17,958.25

Simple interest at the rate of 3% per annum to be payable on \$16,933.25 property loss from the date of internment.

14th June 1954.

(Sgd) H. I. BIRD
Deputy Commissioner

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The principal matters raised by the supplementary argument are two items disallowed by the learned Deputy Commissioner, namely damage to premises, and confiscation of furniture. Though proof of the time and circumstances when the damages to the premises occurred is not altogether satisfactory, it is clear that the claimant is on the horns of a dilemma, and that it would be extremely difficult, if not impossible, for him to obtain evidence which would apportion such damages between the Sino-Japanese War and World War II with any mathematical accuracy. It therefore appears to me that the fairest solution which can be reached is to apportion the cost of repairs to the premises in equal shares as between the two wars, with a resultant award of 50% of the damages against the Canadian War Claims Fund. This would mean an additional award of \$803.50 for this item.

With respect, however, to the furniture, the evidence indicates that the Japanese confiscated all this movable property on 13th August 1937. It would therefore appear that Dr. Chan's loss was established at that time (subject, of course, to later return of property, if any), and that therefore no loss would be established in respect to the furniture during the course of World War II. This inference would seem to be inescapable both in fact and in law, and I must therefore confirm the Deputy Commissioner's disallowance of the claim regarding furniture. The confiscation was completed in 1937, and the probability of fact is that the goods would be looted, destroyed, or otherwise placed beyond return before the commencement of World War II.

As to interest, it should be intimated that the War Claims Rules prescribe that interest on property losses occurring elsewhere than on the high seas shall not run until 1st January 1946.

It is, however, also to be noted that, with the exception of \$28.00 in Canadian currency, property values have been expressed in United States funds, and should be converted into Canadian currency at the premium of approximately 10% prevailing on 1st January 1946.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

- (a) \$1,025.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);
- (b) \$19,507.63 as an award for loss of property in the Far East, such payment to be in order of Priorities Nos. 3(a), 3(b), 4, 5, and 6, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 24th day of February, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3251

Re: Mahon

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review, except for the comment on the valuation of property lost, to which I will later refer.

As the case of the claimant's national status is somewhat unusual, I think the situation, and my opinions thereon, should be restated.

The claimant was born in China on 4th May 1904. His father had been born at Great Village, Nova Scotia. If the qualifications set out on p. 24 of the Report of the Advisory Commission on War Claims were to be interpreted literally and by themselves, I fear that the claimant would not be considered a Canadian at the time of his losses, as he had not then been lawfully admitted to Canada for permanent residence. On the other hand, since he was lawfully admitted to Canada for permanent residence on 21st December 1945 (i.e. before 1st January 1947), the Canadian Citizenship Act would confer on him the status of a natural-born Canadian citizen under Section 4 (1) (b) (i) of the Act. I think it is reasonable and proper to read the qualifications enumerated by the learned Advisory Commissioner in conjunction with that provision of the Citizenship Act. Since the Act regards the claimant as having been a natural-born Canadian on 1st January 1947, it would to that extent have retroactive effect to the date of his birth, and would therefore supersede the literal interpretation of the qualifications set forth by the Advisory Commission's Report. On that interpretation, the claimant would have had Canadian status at the time of his internment, notwithstanding the fact that he had not then been lawfully admitted to Canada for permanent residence...

...

For the reasons mentioned by the learned Deputy Commissioner, I recommend that the claims for loss of superannuation, pay and gratuity, due to internment, be disallowed.

Dated this 30th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3282

Re: Woodcock

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further arguments in support of the contention that the recommendation of the Deputy Commissioner should be reversed and an award recommended.

This is one of a group of cases in which the claimants were hospitalized during practically the whole period of their custody as prisoners of war in Europe. The claimants of this group undoubtedly suffered a great deal more than their fellow prisoners who were not so severely wounded as to warrant hospitalization, but it is a matter of very great difficulty to determine how far such suffering was aggravated by wilful misconduct or culpable neglect on the part of the enemy captor.

I agree with the finding of the learned Deputy Commissioner that the facts of first-aid treatment, prolonged hospitalization, operation and other medical care, and repatriation in October 1943, before the rigours and hardships of the later months of the war had set in, must be taken to rebut the general presumption of maltreatment recognized by my Report under P.C. (1953) 857.

It is therefore necessary to consider whether specific incidents of maltreatment have, or have not, been established. I have carefully reviewed this claim, in the light both of the additional materials and arguments presented on review by the claimant, and of the materials disclosed by the cases of other claimants

who went through somewhat similar (though in most cases less distressing) experiences. I have come to the conclusion that, though the claimant was provided with a very considerable amount of hospitalization, medical and surgical treatment, and with repatriation, his inevitable sufferings were in some respects aggravated by incidents showing a lack of consideration (sometimes very subtly displayed) on the part of some of the personnel of his enemy captors. Obviously, any incident of mistreatment, however subtle, would have a much more serious effect upon a prisoner in the seriously wounded condition of the claimant than a similar incident would have on a healthy and unwounded prisoner. The inevitable result of such aggravation would be some increase in the incapacity to work which persisted after the claimant's liberation. I agree with the contention of the claimant that letters written to his wife would not furnish an accurate measure of the treatment which he was receiving, as he would naturally endeavour to make conditions appear as cheerful as possible.

On the very careful and prolonged review of this claim, I find that the claimant was subjected to some degree of maltreatment during his custody as a prisoner of war, and I would fix the appropriate compensation at a lump sum of \$250.00.

With the greatest respect for the conclusion of the learned Deputy Commissioner, who considered the claim very carefully in the light of the materials then before him, I feel constrained to reverse his recommendation, and I accordingly recommend that the claimant be paid an award of \$250.00 for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 3rd day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3393

Re: Brisson

This is a claim for maltreatment of the claimant, B.133447, Private Joseph Albert Maurice Brisson, Fusiliers Mont-Royal, while a prisoner of war in Europe.

Private Brisson was captured in Normandy on July 21, 1944. He was seriously wounded when captured, having sustained a shrapnel wound in the right thigh. He was taken by the Germans to l'Hôpital de la Pitié in Paris where he remained until he was liberated on August 30, 1944 by United States Forces. Altogether, he was a prisoner of war for a period of 41 days. Private Brisson states that during his stay in the Hôpital de la Pitié, he had two operations without anaesthetic, also that he was in the direct custody of the Gestapo while he was in this hospital. I cannot accept either of these statements. It is of record that l'Hôpital de la Pitié was operated by French nuns and that Canadian wounded who were in that hospital were well looked after. Nor is there any evidence to the effect that the patients in the hospital were at any time in the direct custody of the Gestapo. It is unfortunate that this claimant was wounded when captured and it is possible that he may have experienced some hardship prior to arriving at La Pitié. It must not be overlooked, however, that the men who continued the advance in the face of opposing enemy air and ground forces also experienced considerable hardship. There is no evidence whatever that during the very short period in which he was a prisoner of war, this claimant suffered any maltreatment.

I am therefore obliged to find that in this case the general presumption of the fact of maltreatment recognized by the Report of the Chief War Claims Commissioner has been rebutted, and I recommend that the claim be disallowed.

March 25, 1954.

(Sgd) JAMES FRANCIS, Q.C.
Deputy Commissioner

NOTE:—Disallowance confirmed by Chief War Claims Commissioner 8th March 1955.

CASE No. 3537

Re: Les Soeurs de Sainte-Anne

Deputy Commissioner Marion has submitted to me his findings in this case, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, Counsel for the claimant has relied on submissions previously made by him in a number of similar cases.

In addition, Counsel suggests that if instructions had not been given to the learned Deputy Commissioner it would perhaps have been possible to obtain his opinion on the question of indemnity for damages in a case of this kind, and that such opinion might have been different to that of Deputy Commissioner Choquette on the same subject. The reference is obviously to the question whether, or not, available compensation under the Treaty of Peace with Japan must be deducted by way of "compensation otherwise provided for". Deputy Commissioner Choquette did not make any finding or recommendation on the deductibility of available Japanese Treaty awards in the one similar case which was heard by him, namely No. 9303—*Les Syndics Apostoliques des Frères Mineurs ou Franciscains du Canada*. Instead, he heard the evidence bearing on the question in the capacity of Special Examiner, and reported only the evidence which had been taken at the hearing. This is obviously a question which is not aptly determined by the individual finding of a Deputy Commissioner. It must rather be determined on an overall ruling which will be made applicable to all cases of a similar nature.

In some of his submissions, learned Counsel has asked the Commission to infer that it should be regarded as the governmental agency or channel through which claims under the Treaty of Peace with Japan should be presented, from the fact (among others) that no other governmental agency or department had been designated for the purpose. The inadequacy of this argument is illustrated by a comparison with the situation prevailing in respect to claims under the Treaty of Peace with Italy. Under the Italian Treaty, notice of each claim was required to be given to the Government of Canada on or before 31st December 1951. At that date claims could obviously not be channelled through the War Claims Commission, as no such commission was then in existence. Nevertheless, all claims of which notice had not been given to the Government before the prescribed date were necessarily disallowed, and the amounts which might have been obtained by the presentation of such claims were deducted from the awards of the respective claimants when they later presented claims under the War Claims Rules.

On the same analogy, I feel bound to recommend deduction of amounts which were available under the Treaty of Peace with Japan.

The present claim is in many respect similar to that presented in *Case No. 6423—Les Sœurs de l'Assomption de la Sainte-Vierge*, except that in the present case there is no evidence of any specific notice having been received by or on behalf of the claimant in Japan.

It is clear from the evidence, however, that the present claimant was a member of the "Comité national d'entraide missionnaire du Canada", which was formed to assist all Canadian religious corporations and/or their members who had suffered losses in the Second World War, including the Far East and Japan specifically, in establishing their claims.

On 24th March 1952, Reverend Rosario Renaud, the Director Delegate of the Comité, sent out a circular letter to the constituent members of the Comité, including the claimant, requesting them to notify the Comité immediately of their intentions regarding claims which they might wish to make, and designating a member of each Order to whom the blank forms might be addressed and to whom further relevant communications might be sent.

On 14th April 1952, the claimant through its General Treasurer acknowledged the foregoing letter, mentioned in some detail the losses the Community had suffered in Japan, and requested that further communications should be addressed to the General Treasurer of the Order.

On 6th August 1953, the War Claims Branch of the Department of the Secretary of State forwarded to Father Renaud a copy of "La Loi d'Indemnisation pour les biens des puissances alliées du Japon," which Father Renaud acknowledged on 12th August 1953.

It is arguable that the claimant, as an individual Order, did all that could be reasonably expected of it in arranging for the due presentation of its claim. From the evidence submitted it appears that the default in giving due notice of the claim under the Treaty of Peace with Japan lay with the organization known as "Comité national d'entraide missionnaire du Canada". The claimant had, however, apparently relied upon the Comité to take all necessary preliminary steps, and had constituted the Comité as its representative in the context. For that reason, it inevitably follows that the claimant is responsible for the default of its mandated representative, and must therefore be held to have been itself negligent in its failure to present a claim under the Treaty of Peace with Japan.

In all other respects, the case seems to be similar to that of the *Sœurs de l'Assomption de la Sainte-Vierge*, and my remarks in that case apply *mutatis mutandis*.

Though I consider the foregoing notifications to have been in the nature rather of courtesies than of legal requirements, they appear to lend strong moral support to the position which the Commission has taken in respect to satisfaction otherwise provided for under the Japanese Peace Treaty.

Under the terms of the Japanese Treaty, the quantum of damages payable for loss or destruction of tangible property which cannot be restored to the owner is based on the sum of money required at the time of compensation for the purchase in Japan of property similar in condition to that of the former property at the time of the beginning of the war. The experience of the Commission is that such a basis of compensation is more generous than the criterion prescribed by the War Claims Rules, namely the market value at 30 June 1941, with deduction for depreciation, if any, up to the time of the actual loss. The only specific exception which we have noticed is the case of a commodity whose post-war market value was lower than the market value in 1941. The Commission has, however, recognized that in cases of small claims for loss of objects of a personal nature, certain difficulties of proof, expenses and other contingencies might militate against the securing of full compensation

from the government of Japan, and we have therefore allowed an exemption not exceeding the capital sum of \$200.00 from the application of the deduction of compensation otherwise provided for in respect of such claims.

The last mentioned exemption, however, is not applicable to a case of loss of, or damage to, immovable property, as the compensation available under the Japanese Treaty for such losses was invariably greater than that available under the War Claims Rules including interest.

For the foregoing reasons, as well as those set forth in my decisions in the Franciscan (No. 9303) and Sisters of the Assumption (No. 6423) cases, I have no alternative but to recommend that this claim be disallowed.

Dated this 20th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3757

Re: Sugden

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review. He does, however, stress the apparent smallness of his award in proportion to the unusually long period of his imprisonment, and in comparison with that of a fellow-prisoner who had spent a year less time in custody.

In the absence of a specific name, it is impossible for me to make a detailed comparison, but I may refer to the obvious facts in the present case which prevent the making of an award comparable to the average on a *per diem* basis: the present claimant was never shackled; his 1945 "hunger march" was comparatively short; and, being an officer, he was not subjected to the rigours of many working parties.

I agree with the claimant's general contention that "those who were allowed to work were better off than those who were behind barbed wire for the entire war", and consequently the Commission never makes an award for forced labour as such, even when it technically violated the conventions. Many private soldiers were, however, subjected to most improper and oppressive working conditions in mines and elsewhere, and those were escaped by this claimant.

The only unusual incident in this case which may not have been fully considered was the occasion on which the claimant and a companion were recaptured after a 10-day escape. The claimant underwent the vicarious suffering and mental strain of seeing his partner improperly shot, and was himself beaten and returned to camp. With the information available it is difficult to assess this incident, but, in the context of the claimant's extremely long custody, I would give him the benefit of an additional nominal award of \$50.00.

With this variation, I approve the Deputy Commissioner's report and I accordingly recommend that the claimant be paid \$434.20 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 2nd day of June, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 3903

Re: Glover

Deputy Commissioner James Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that the claimant be paid \$465.40 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 23rd day of June A.D. 1954

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

In my report of 23rd June 1954, I stated that the claimant had omitted presentation of further materials on review. Unfortunately, at that time the claimant had written a letter, submitting certain arguments in support of the contention that his award should be increased. When I received that letter after the completion of my report, I decided to treat my recommendation of June 23rd as an interim recommendation. Apparently the claimant was interned for over three months in what was said to be a reprisal camp, No. XX-A, at Thorn in Poland. The rooms were dungeons in an antique fort, which was completely underground. The windows faced a moat wall and were boarded up to within three inches of the top, making it impossible to see, read or write. It is unnecessary to enumerate the detailed privations suffered by this claimant during that particular custody, but his account seems entirely credible.

In view of his extremely long period of detention, I would consider his detention at Thorn to be the equivalent of custody by a criminal organization, and I would therefore recommend an additional award of \$76.80.

I therefore vary my former recommendation and I now recommend that this claimant be paid \$76.80 as an additional award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 28th day of January A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4013

Re: Crow

... The claimant complains particularly of lack of medical attention by his captors, both in respect of treatment for his wounds after capture, for a three weeks' attack of dysentery later, and for the stomach ailment with which he was later afflicted. He claims that this lack of attention was the cause of the duodenal ulcers which developed later. It is always difficult to determine whether delay and inadequacy of medical treatment were the result of culpable neglect so as to constitute maltreatment, or whether they were the inevitable result of the disorganized conditions prevailing on account of the existence of a state of war. In this case, however, there does seem to have been a succession of

delays and neglects in the providing of proper medical care. Though a maltreatment award cannot be directed towards providing pecuniary compensation, I would recommend an additional nominal award of \$50.00. . .

Dated this 17th day of June, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4124

Re: Clough

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

There is evidence that this claimant, during the period when he was in custody of the Gestapo, was repeatedly beaten and subjected to various tortures for the purpose of forcing him to divulge information. The claimant alleges that this treatment resulted, among other things, in impairment of his vision, which necessitated two operations. This condition is corroborated by the opinion of Dr. Samuel Engel, who had the claimant under his medical care for four years, and he certifies that in his opinion the claimant's condition was primarily caused by ill-treatment while a prisoner of war.

Though this Commission has no jurisdiction to recommend compensation for pecuniary loss suffered by members of the Armed Services, I would recommend a nominal additional award of \$200.00. Though this addition brings the claimant's award over the normal maximum of \$600.00, I am of the opinion that it is justified in view of the extreme brutality of the treatment to which he was subjected, the context of his long period of internment, and the resultant suffering and incapacity.

With this variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid \$627.60 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 20th day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4266

Re: Emms

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I think, however, that I should refer to a prima facie discrepancy between the learned Deputy Commissioner's findings as to national status, and the opinion of the Department of Citizenship and Immigration. I refer to the words "notwithstanding the opinion of the Citizenship and Immigration Department,

citizenship in 1939 should be held established." In order to indicate that there is no real conflict between these two points of view, I would restate the learned Deputy Commissioner's finding as follows:

Notwithstanding the opinion of the Department of Citizenship and Immigration to the effect that on 3rd September 1939 the claimant was not in possession of "Canadian domicile", in the statutory sense, it is established that at that time he had "a domicile in Canada", at common law, and was therefore a Canadian by reason of qualification (vi) set forth on page 24 of the Report of the Advisory Commission on War Claims. The Department of Citizenship and Immigration certifies that the claimant has been a Canadian citizen since the 1st of January 1947.

I think I should also restate the method of deduction of insurance monies received by the claimant. Though this does not make any difference in a property claim of this size, the interests of uniformity make it desirable that deduction of insurance should be stated in the method described on page 16 of the Report of the Advisory Commission on War Claims.

I accordingly recommend that the claimant be paid \$1753.00 (being the established value of the property lost, after deducting the amount of insurance payment received) as an award for loss of property at the sinking of the S.S. "*Athenia*", with simple interest at 3% per annum from 3rd September 1939, such payment to be in order of Priority No. 3 (a), and subject to deduction of \$1407.00 received from the Government of the United Kingdom, with interest adjustment thereon from 28th November 1947.

Dated this 29th day of October, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4389

Re: Sister Marie de Jésus Eucharistie

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified her, pursuant to the provisions of Rule of Procedure No. 20, that I considered it necessary to recommend disallowance of the maltreatment claim, and also to recommend disallowance of the claim for loss of property unless more specific evidence as to the extent of the alleged loss could be furnished.

No additional evidence has been presented on review, but the claimant has relied on a number of general remarks submitted in similar cases and has argued that the awards recommended by the learned Deputy Commissioner should be maintained and an award granted for personal injury.

I have very carefully reviewed all the circumstances of this case, and am still of the opinion that no valid claim for maltreatment has been established. I am still unable to find any evidence that the Soeurs Antoniennes were either subjected to specific maltreatment, or were interned in a Japanese-operated camp. During the period when they resided in the Bishop's Palace, the Sisters were, according to their own evidence, completely free, and there were no Japanese guards whatever in the Palace courtyard during that period.

Subsequently, while the Sisters were residing in a building or buildings in the vicinity of the Bishop's Palace, they appear to have been subject to the sole

restriction that they must not depart. There were no Japanese guards stationed on their premises, and the periodic visits of the guards appear to have been largely perfunctory and for the purpose of seeing that no one went away. The Japanese did not interfere in any way with the Sisters' mode of living or with the management of their house. The Mother Superior was free to go shopping in the town for the purpose of purchasing the necessary provisions, and she was sometimes accompanied by another Sister. The food supplies, though not adequate, were apparently those which were available for the civilian population, and were not restricted in any way by the terms of internment. In other words, the claimants had the same food supplies available to them as if they had not been interned. In fact there is some evidence that they were occasionally able to secure additional supplies on something corresponding to a black market.

I am therefore convinced that no actual maltreatment has been established, and that the detention of the claimant amounted to house arrest, or enforced residence under enemy supervision, and not to internment in a Japanese-operated camp or camps.

Under the War Claims Rules, and under International Law, internment in itself does not constitute maltreatment, and is not compensable unless there is such a marked departure from humane treatment that there would be a consensus among civilized peoples that it constitutes maltreatment. I have not been able to find in the materials submitted any evidence that would lead to the conclusion that these claimants were subjected to compensable maltreatment.

This maltreatment claim is very similar to that presented on behalf of the Sœurs missionnaires de l'Immaculée Conception who were also detained at Szepingkai (File No. 3101 DOZ—*Case No. 8977*) which was disallowed by me on the basis of a preliminary memorandum dated 2nd December 1957.

I have no alternative but to concur in the opinion of the learned Deputy Commissioner that the claim for personal injury must be disallowed. The War Claims Rules distinctly preclude compensation for loss of time spent in internment or house arrest, and the resulting loss is therefore not compensable under the Rules.

As to the claim for loss of personal effects, the evidence as to the actual method and date of the loss of property is vague and inconclusive. On further examination of the claim, in the light of evidence available in a number of other similar cases, I am, however, disposed to accept the finding of the learned Deputy Commissioner to the effect that this claimant suffered a property loss by reason of operations of war between 7th December 1941 and 2nd September 1945, and that the compensable value of the goods so lost may fairly be assessed at \$200.00.

I therefore approve the Deputy Commissioner's report so far as the property loss is concerned and recommend that the claimant be paid \$200.00 for loss of property in Manchuria, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

For the foregoing reasons, I reverse the recommendation of the Deputy Commissioner on the maltreatment claim and recommend that that claim be disallowed. I approve the Deputy Commissioner's recommendation for disallowance of the claim for personal injury.

Dated this 7th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4431

Re: *McKillop*

Since making my report on the review of this claim of the 25th January ultimo, I have noticed that, although it was pointed out to the claimant that she had the privilege of prosecuting a claim for loss of property at the sinking of the S.S. "*Athenia*", she declined to do so. The apparent reasons for the claimant's reluctance to prosecute such a claim were ill health and reasonable satisfaction with the award of \$804.00 received from the Government of the United Kingdom.

On reviewing a number of similar cases, I have come to the conclusion that a claimant who formally filed a claim for loss of property, but discontinued it by reason of payment of the United Kingdom award, should not be prejudiced by such discontinuance. On that basis, it should be assumed that the payment of the United Kingdom award is evidence to support the establishment of a valid claim pro tanto and that the claimant in such a case is entitled to interest on the amount awarded from the date of the loss until the date of payment.

I would accordingly vary my former report by recommending that this claimant be paid \$804.00 as an award for property lost at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3(a), and to bear interest from 3rd September 1939, at 3% per annum; subject to deduction of the same capital sum as received from the Government of the United Kingdom, with interest adjustment from 7th November, 1948.

Dated this 11th day of February, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4434

Re: *Milne*

Deputy Commissioner Hyndman has submitted to me his findings and recommendations on the claims for personal injury and death of the late David Milne.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has waived presentation of further materials.

I have also notified the claimant, pursuant to the provisions of Rule of Procedure No. 20, that I considered it proper to make two slight modifications in the awards recommended by the learned Deputy Commissioner:

- (a) In the first place, the award of \$11,811.00, representing mainly loss of wages for the fourteen month period ending 2nd July, 1948, should properly bear interest from the mesne date of the fourteen month period (i.e. 2nd November 1947) rather than from the end of the period;
- (b) In the second place, the claimant will be receiving the benefit, as of 2nd November 1947 (since interest will be computed from that date) of \$11,811, representing the personal injury award, in addition to the cash benefit already received from the estate of the late Mr. David Milne. Assuming that if Mr. Milne had lived, his wife would have had the direct benefit of one-third of the additional amount of \$11,811 at the time of receipt by him, she would presumably not have received the balance until the end of the fifteen year period selected as representing his expectancy of life, if at all. I am, therefore, of opinion, that, in addition to deducting \$18,126.58, representing the accelerated gain

in respect of the sum of \$50,613.38 already received from Mr. Milne's estate, there must be deducted a corresponding proportional amount to represent the accelerated gain in respect of \$7,874 (being two-thirds of the amount recommended by the Deputy Commissioner as a personal injury award. I would estimate the accelerated gain of the \$7,874 at approximately \$2,800, and I would recommend deduction of the last-mentioned amount from the "death" award granted by the Deputy Commissioner.

Since my preliminary review of claim for death of the late David Milne, I have had the opportunity of further reviewing this claim in conjunction with a number of somewhat similar cases.

I have reached the conclusion that in the present case there is evidence that the death of the deceased caused a general dislocation of arrangements in the family to which the deceased belonged. As a consequence there appears to have been a resulting pecuniary loss in addition to that for which specific compensation has been recommended by the Deputy Commissioner. It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the (additional) amount of \$1,000.00.

The claimant has acquiesced in the proposed alterations in the awards recommended by Deputy Commissioner Hyndman. The "death" award, as so revised, will therefore be computed as follows:

Recommended by Deputy Commissioner	\$17,015.63
Deduction for accelerated value of personal injury award	2,800.00
	<hr/>
	\$14,215.63
Additional award for pecuniary loss occasioned by general dislocation	1,000.00
	<hr/>
	\$15,215.63
	<hr/>

Although the claim for compensation for death was presented by Mrs. Milne, the widow of the deceased David Milne, in her capacity as executrix and sole beneficiary of his estate, it appears that the pecuniary loss and consequent expenses occasioned by her husband's death were shared with her by her two sons, Alexander Milne and George Gordon Milne. Consequently, pursuant to an agreement with her two sons, Mrs. Milne executed a document under seal whereby it was stipulated that the proceeds of the "death" award should be divided among the members of the family in the following proportions: namely, 25 per cent to each of the sons and the remaining 50 per cent to Mrs. Milne in her own right. I am of opinion that the award recommended as compensation for death should be distributed according to the agreement reached by Mrs. Milne and her sons.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I recommend accordingly there be paid the following amounts:

- (a) to Mrs. Robina Mills Milne, as executrix of the will of David Milne deceased, \$11,811 as an award in compensation for personal injury to the late Mr. Milne caused by maltreatment of him whilst a civilian internee in the hands of the Japanese, such payment to be in Order of Priority No. (1-2) and to bear simple interest from 2nd November, 1947, at 3% per annum;

- (b) \$15,215.63 as an award for pecuniary loss occasioned by the death of the late David Milne, such amount to be distributed and paid in the following proportions, each payment to be in Order of Priority No. (1-2) and to bear simple interest from 2nd July 1948 at 3% per annum:

- (1) to Alexander Milne—\$3,803.91;
- (2) to George Gordon Milne—\$3,803.91;
- (3) to Mrs. Robina Mills Milne—\$7,607.81.

Dated this 8th day of December, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4437

Re: Noble

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant's somewhat elaborate submission on review emphasizes principally his contention that a great many of the goods which he lost were practically new at the time of the loss, and should therefore not be subject to a substantial deduction for depreciation. The uniform rule applied by the Commission is that the reasonable market value of consumer goods, however new, must be reached by the deduction of an allowance for depreciation. The percentage of such deduction varies, of course, with the age and condition of the goods, and with their intrinsic nature. The learned Deputy Commissioner gave very careful consideration to all these factors on the basis of evidence presented to him in the course of two oral hearings. It would, therefore, be difficult for me to attempt to vary the valuation at which he has arrived as a result of the oral evidence on examination in the light of his wide experience in similar cases. I have, however, conferred with the learned Deputy Commissioner on this point, and we have reached the opinion that some of the goods lost by the claimant, being practically new, and of such a nature as not to depreciate rapidly in value, might be subjected to a somewhat smaller percentage of deduction for depreciation than the average fixed in the Deputy Commissioner's report. It is extremely difficult to make any mathematical computation, but I would fix the additional allowance at \$300.00, representing the difference between 10% depreciation and 30% depreciation on articles valued by the claimant at, say, \$1,500.00.

There is one other item which, I think, might be made an exception to the average rate of depreciation found by the Deputy Commissioner. I refer to the automobile, for whose loss the \$533.00 is claimed.

I have carefully examined the method of computation by which the claimant arrives at this amount, and it seems at least arguable that the \$533.00 represents the already depreciated value of the motor vehicle at the relevant time, namely 30th June 1941. The value estimated by the claimant is made up of original second-hand cost about that time, plus expenditure for rebuilding the automobile to make it serviceable, plus cost of further repairs necessitated by bombing damage, minus allowance made by British authorities on "compulsory re-sale to Army" on 30th January 1942 at the nominal price of \$300.00 (Straits).

Some question might arise as to the validity of this item as a basis for compensation against the Canadian War Claims Fund. It may, as Advisory Commissioner Ilsley pointed out on p. 68 of his Report, be necessary in some cases to draw a fine line between acts of the military authorities which were or were not acts of actual warfare. The claimant does not seem to be definitely sure of the purpose for which the British Army requested his car, but his inference from the circumstances was that it was intended for destruction in order to prevent it falling into the hands of the Japanese. I am inclined to give him the benefit of the doubt on this point, and therefore the item would come under Class 25 on p. 68 of the Advisory Commissioner's Report, as "loss of property outside of Canada resulting from orders given in a theatre of actual warfare by Allied military authorities for the purpose of denying or diminishing the use of such property to the enemy."

I would accordingly reinstate the deduction of \$159.90 made by way of depreciation on the claimant's estimated value of this item.

The result of these two variations is to add \$459.90 to the amount recommended by the Deputy Commissioner, making a total of \$3,675.90.

I may mention that the claimant is perhaps still in a less favourable position than the majority of those having similar claims, as he did not make any claim against the Government of Canada for interim non-capital compensation. This Commission has, however, no jurisdiction to remedy that discrepancy.

With the foregoing variations, I approve the report of the Deputy Commissioner and I recommend that the claimant be paid \$3,675.90 as an award for loss of property in Singapore, such payment to be made in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$3,115.91 received from the Government of Canada, with interest adjustment from 6th February 1947.

Dated this 8th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4439

Re: Porchon

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

On review, the claimant has submitted numerous arguments and additional information, in support of the contention that the learned Deputy Commissioner's recommendation should be reversed and an award recommended. The Commission has also conducted an independent examination of the circumstances surrounding the claimant's alleged losses and has received valuable corroboration in the form of a letter from Mr. James P. Manion, who was Acting Commercial Attache at the Canadian Legation in Paris at the time of the evacuation of the French Capital.

Mr. Manion's statements confirm the background of the losses as alleged by the claimant, though unfortunately there is no evidence available to establish conclusively that the goods had disappeared during the course of World War II. I think, however, that the materials now on hand are sufficient to warrant a reasonable inference that most, if not all, of the claimant's goods disappeared during World War II, and may therefore be presumed to have been requisitioned by the Germans or to have been looted by soldiers or civilians.

It is extremely difficult to estimate, with mathematical accuracy, the value of the goods lost. I was very favourably impressed by the attitude of the claimant, and he showed no disposition to exaggerate the extent of his losses. In view, however, of the weakness of the presumption that all his goods were lost by operations of war, and in view of the inevitable depreciation in the market value of consumer goods, I consider that \$2,000.00 would be a reasonable estimate of the compensable loss under the provisions of the War Claims Rules. This estimate is composed of \$500.00 for the loss of a motor vehicle and \$1,500.00 for the loss of the remaining articles.

For the reasons mentioned by the learned Deputy Commissioner, the portion of the claim relating to goods lost in connection with embarkation at Bordeaux must be disallowed.

The claimant filed an application with the Government of Canada for compensation under an Order in Council authorizing payment of capital compensation for employees who suffered losses by operations of war. He was found to be ineligible for such compensation owing to the fact that he was locally-engaged employee and not a civil servant within the meaning of the *Civil Service Act*.

On the other hand, it would appear that the claimant would have been able to receive at least partial compensation for his losses from the French authorities, and therefore this Commission is bound to recommend deduction of the amount which he would have received from that source if he had filed and prosecuted a claim with reasonable diligence. I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Having reviewed the report of the Deputy Commissioner, I reverse his recommendation, and I accordingly recommend (subject to the foregoing reservation as to deduction) that the claimant be paid \$2,000.00 as an award for loss of property in France, such payment to be in order of Priority No. 3 (a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 31st day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4441

Re: Paquin

Claim for maltreatment to the amount of \$10,000.00.

In June 1940, the claimant, at that time manageress of a hotel at Boulogne-sur-Mer, France, was arrested by the Germans, interned or kept under house arrest until September 1944. On a sheet attached to her Form F, she furnishes the following particulars:

"Captured at Boulogne-sur-Mer in the Pas de Calais in June 1940. Confined in a shed of the harbour-station about one and a half to two months. Taken from there to Marc en Baroel where some Germans had a camp of German civilian prisoners. In September they took us from the town of L'Isle and put us in groups of four or five into uninhabited houses designated by them. From that time on they called us female civilian prisoners under

house arrest. We could not leave that house for any reason. We had to go to the French soup kitchens to be fed. The French Navy granted us a few food and fuel coupons. In March 1941 the German police came to get me and take me to the town of Cambrai, this time with another group of female prisoners. There again the same treatment, this time with closer supervision. In May they came and got me to take me to jail in D'Ouais. Regrouping of prisoners to be taken to Camp Liebenau, Wuttenberg in Germany. In November, another move. I was returned to L'Isle, France, where I came back to the same conditions. In this mock supervised liberty, under continual bombardments, they came and fetched me without giving any reasons and locked me up in their *kommandantur* station several times. In France, more of a prisoner than ever and not able to write or receive mail, which were permitted to us in Germany. This lasted until the liberation of L'Isle in September 1944."

The claim is further based on the following answers found in Form F:

9. Give full particulars of maltreatment suffered.

No details except suffering and hunger.

10. Did the above maltreatment result in incapacity for work?

Yes, from weakness.

11. Did the above incapacity for work subsist after your liberation? If so, give full particulars of the incapacity and attach medical certificate establishing such incapacity:

Yes, general weakness, three surgical operations for intestinal disorders.

12. Have you suffered any pecuniary loss as a result of the above incapacity? If so, state the amount of the loss and give full particulars of how this amount is made up:

Four years' wages at the rate of a minimum wage of two thousand five hundred dollars (\$2,500.00) per year, a total of ten thousand dollars (\$10,000.00).

Heard before the undersigned in Montreal on November 3, 1954, the claimant stated that before her internment her health was excellent; that she lost some 30 or 40 pounds in the course of her internment, weight that she has now more than regained; that her health was affected by the shortage of food during the internment; that after her liberation, she underwent a surgical operation of the intestine at Lille, France; that she returned to Canada in 1945; that she resumed work 5 months after her arrival; that she underwent 2 or 3 other operations to the intestine in 1951; that she suffers from tumour of the intestine; that she now has a position as assistant hotel manager in Montreal, but that she cannot work as many hours as before her internment.

The claimant has not produced any medical evidence to establish the relation between the alleged maltreatment and the disorders and operations she mentions, nor the incapacity resulting from them.

Moreover, her claim does not rest on the alleged incapacity but only on the loss of wages incurred during her four years of internment or house arrest. Unfortunately for the claimant, the Rules of this Commission do not admit claims for loss of wages by reason of internment:

"Claims for loss of income during internment cannot be allowed as internment is legitimate and is not the basis of an admissible claim. Such claims were consistently refused after the last war."

(R.A.C. p. 63, no. 5).

Under these circumstance the claim cannot be allowed.

From the foregoing,

The claimant's claim is rejected.

Montreal, December 2, 1954.

(Sgd) FERNAND CHOQUETTE

Deputy Commissioner

NOTE: Disallowance confirmed by Chief War Claims Commissioner 8th February 1955.

CASE No. 4486

Re: Zimmer

...I therefore recommend that the claimant be paid \$4,930.65 as an award for loss of property in North Borneo, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,524.34 received from the North Borneo War Damage Claims Commission, with interest adjustment from an estimated mesne date of 31st July 1951.

Dated this 12th day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL

Chief War Claims Commissioner

CASE No. 4488

Re: Elliott

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further arguments in support of the contention that the recommendation of the Deputy Commissioner should be reversed and an award recommended.

Though the evidence presented in support of this claim is in some respects meagre, the case is one in which it is naturally difficult for the claimant to present fully detailed and satisfactory evidence.

It appears, however, that the Canadian Government plan for compensation of servicemen for loss of their personal effects does not extend to a case such as the present one, where the loss occurred after the death of the serviceman. It therefore appears that the War Claims Rules do not preclude the Commission from recommending compensation for goods lost in the course of shipment after the decease of the serviceman.

The Director of Estates of the Department of National Defence has certified that the late Lieutenant Elliott's file in that Department contains copies of letters informing his widow of the loss of her deceased husband's effects at sea, due to enemy action. The Director also certifies a copy of a list of personal equipment lost, and the Administratrix declares the value of the lost property to have been \$750.00. As indicated above, it is very natural that the Administratrix is unable to assign a detailed value to each of the individual articles lost. It must be remembered that cost price, replacement value, and value to the claimant, though factors in the determination of market value, cannot be regarded as ultimate criteria of compensable value under the War Claims Rules. The Commission is bound to assess compensable value at the fair market value as of 30th June 1939. In view of all the circumstances of the case, I would fix the compensable value of the goods lost at \$500.00.

The evidence indicates that the only assets of the Estate of the late Charles Thomas Elliott, apart from the personal belongings which were lost, was an undivided interest in some real estate in Ontario, which was not of any great value. Apparently the property is occupied by the deceased's widowed mother. Though the circumstances of this situation are not entirely clear, it appears probable that the accelerated benefits in the estate of the deceased which accrue to the present claimant by reason of his premature death were less than the benefits which she would have enjoyed if he had lived out his normal expectancy of life. I am therefore of the opinion that no deduction should be made in respect of the acceleration.

It appears by inference from the information on file that the deceased left no issue to share in his estate. I have not considered it necessary to hold up the adjudication further for inquiry into that point, as obviously if there were children of the marriage they would be Canadians, and therefore eligible to share. The award recommended should be held by the Administratrix for disposition under the Intestacy Laws of Ontario, where the deceased was domiciled at the time of his death.

I accordingly reverse the decision of the learned Deputy Commissioner, and I recommend that the claimant be paid \$500.00 as an award for loss of property at sea due to enemy action, such payment to be in order of Priority No. 3(a), and to bear simple interest from an estimated date of 2nd November 1942.

Dated this 17th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4493

Re: Placek

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review.

I very carefully reviewed these claims in conjunction with *Case No. 9288—Gruber*. Like Gruber, the present claimant Charles Placek appears to have been owner of a one-third interest in the business enterprise known as Placek & Co. For the reasons mentioned in the Gruber case, I am of the opinion that the claimant is entitled to an award, which I would fix at \$4,000.00, for loss of articles belonging to the original stock or equipment of the enterprise which were confiscated, looted, or destroyed by operations of war during the period between his naturalization on 6th March 1944 and the end of hostilities on 8th May 1945.

It also appears from the evidence that the present claimant Charles Placek was the owner of 11¼% of the issued share capital of an incorporated company known as Jega & Co. Ltd., whose tangible assets disappeared under circumstances similar to those involved in the case of Placek & Co. By analogy, and again placing myself in the position of a jury, I would estimate the compensable loss of the claimant in respect of the Jega assets (limited to the period of World War II when he was a Canadian national) at \$3,000.00.

The two foregoing items would increase the award recommended for Charles Placek by \$7,000.00.

As to the claim of Mrs. Anny Placek for loss of personal property, household goods and chattels, the learned Deputy Commissioner placed a value

of \$6,000.00 on the contents of her apartment, that amount being presumably related to the time at which the goods were ultimately removed by the German occupants. I feel myself impelled to disagree with the conclusion of the learned Deputy Commissioner to the effect that there was only one seizure or confiscation, which occurred in March 1939. Such confiscation as then took place is, in my opinion, entirely consistent with the possibility that the Germans who then took possession of the premises and their contents might later have vacated the premises without removing any of the movable property. I therefore believe that the actual removal of the goods to Germany is not merely a continuation of the original seizure, but constitutes a fresh and separate act of dispossession in an entirely different degree, and therefore, since it occurred at a time when the claimant Mrs. Placek was a Canadian national, gives rise to a compensable claim under the War Claims Rules. The estimate of value made by the learned Deputy Commissioner seems entirely fair and reasonable in the circumstances. I would therefore recommend that Mrs. Placek's award be increased in the amount of \$6,000.00 by reason of this item.

As to the claims for damage to immovable property, I agree with the learned Deputy Commissioner that the documentary proof of ownership by the claimants is not technically so complete as may be desired. I am, however, not disposed to disturb his finding that the cumulative effect of the testimony and other materials is sufficient to support the conclusion that the claimants were the lawful owners of the respective shares claimed in the various properties. For the reasons mentioned in *Case No. 1486—Whitehead*, any confiscatory measures enacted or carried out by the German authorities during their occupation of Czechoslovakia, either before or during the period of World War II, should be considered as invalid *ab initio*, and therefore as ineffective to divest the title and ownership of the claimants.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I accordingly recommend that there be paid to the claimants the following sums as compensation for loss of property in Czechoslovakia, each payment to bear simple interest from 1st January 1946 at 3% per annum:

(a) To Charles Placek \$98,350.00, such payment to be in orders of Priority Nos. 3(a) to 6(b) inclusive;

(b) To Mrs. Anny Placek \$10,786.00, such payment to be in orders of Priority Nos. 3(a) to 4(b) inclusive.

Dated this 17th day of April, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4495

Re: The United Church of Canada

By my recommendation of 21st October 1955, I noted that the award recommended for payment to the claimant Ernest Black Struthers was arrived at by Deputy Commissioner Hyndman through the deduction of \$1,500.00 advanced to that claimant by The United Church of Canada on account of the loss of his goods. I then reserved the question of the propriety of repayment to The United Church of Canada of the amount so advanced.

Since then, the claimant filed with the Commission an assignment and transfer to The United Church of Canada of the \$1,500.00 portion of his claim representing the advance made to him by the Church shortly after his loss, and subrogation of The United Church of Canada to any entitlement he may have

in respect to that portion of his claim. From all the circumstances of the case, I infer an obligation on the part of the original claimant to repay to The United Church of Canada the advanced sum of \$1,500.00 if and when he received it from another source of compensation. Following the practice laid down in the case of Brock Frederick Jamieson—Case No. 2110—I am therefore of opinion that the \$1,500.00 and relevant interest should be repaid to the Church.

I therefore recommend that, in addition to the amount paid to the original claimant Mr. Struthers, pursuant to my recommendation of 21st October 1955, there be paid to The United Church of Canada, by way of subrogation to the portion of Mr. Struthers' claim relative to the amount advanced to him by the said Church, the sum of \$1,500.00 for loss of property by Ernest Black Struthers in China, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 16th of February, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4496

Re: White

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review, though she expresses herself as being disappointed by the smallness of the recommended award.

Owing to the difficulty of segregating the claimant's property and her interest in communal property from the property and interest of her husband, who was not a Canadian at the time of loss, and owing to the consequent difficulty of determining if the loss of any of the goods claimed has been compensated by the Malayan War Damage Commission, it appears to me that the learned Deputy Commissioner has made as good an estimate as possible of the loss actually suffered by the claimant in her own right. I should be very hesitant indeed to disturb the findings which he has reached after careful consideration on the basis of an oral hearing.

The valuation fixed by the Deputy Commissioner is the fair market value of the goods as at 30 June 1941, and the applicable rate of conversion from Straits dollars would be the prevailing rate of exchange at that date. The recommended award is therefore equivalent to Canadian \$775.20.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$775.20 as an award for loss of property in the Straits Settlements, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 8th day of March, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: The Deputy Commissioner's Report indicates that compensation respecting the articles concerned in this award was refused by the Malayan War Damage Claims Commission on account of the luxury nature of such articles.

CASE No. 4497

Re: Goss

On 31st January 1955, I approved the recommendation of Deputy Commissioner Hyndman for payment to the claimants, as Administratrices and beneficiaries of the Estate of Lorna Margaret Faulds Goss, of \$2,200.00 as an award for the loss of personal property of the late Mrs. Goss at the sinking of the SS "Lady Hawkins" on 19th January 1942.

Mrs. Goss herself lost her life at the time of the disaster. She died intestate, and the beneficiaries of her estate were her husband, John Munro Goss, and her two sisters, the claimants.

John Munro Goss died in 1944, apparently also intestate. The learned Deputy Commissioner found that Mr. Goss left as his heir his mother, Mrs. Ethel Munro Goss, also a Canadian citizen at all material times. He went on to refer to an assignment by Mrs. Ethel Munro Goss to the claimants of all her claim share and interest in any compensation payable in respect of the loss of the late Mrs. Lorna Margaret Faulds Goss. The learned Deputy Commissioner concluded this part of his report by stating that consequently, the only individuals interested in the claim are the two sisters of the late Mrs. Goss, the administrators above-mentioned.

I took these portions of the learned Deputy Commissioner's report to imply a finding that Ethel Munro Goss had been sole beneficiary of the estate of John Munro Goss, and therefore had been competent to assign the whole of his share to the claimants. I accordingly approved the recommendation of the Deputy Commissioner without variation. It was subsequently brought to my attention that the next-of-kin of John Munro Goss, and consequently the beneficiaries of his estate, include not only his mother, but also his two sisters, Mrs. Enid Goss Lowe and Mrs. Mary Goss Galloway. According to the English common law, which I understand to be in force in most of the Canadian Provinces, if an intestate dies leaving no widow or issue but is survived by his father and/or mother, the father and/or mother take his estate to the exclusion of brothers and sisters. Apparently assuming this to be the relevant law, the learned Deputy Commissioner concluded that Mr. Goss' mother was the sole beneficiary of his estate, and that his sisters had no interest in this claim and therefore their national status was irrelevant. On that assumption, the elder Mrs. Goss could assign the whole share of her deceased son.

It appears, however, that John Munro Goss was domiciled in Ontario, and that the statute law of that province has departed from the English common law, so as to enable the brothers and sisters of an intestate to share (per capita) with the father and/or mother. According, therefore, to the Devolution of Estates Act of Ontario, Mr. Goss' mother, Ethel Munro Goss, and his two sisters, Mrs. Lowe and Mrs. Galloway, would share equally in the distribution of his estate, and consequently in entitlement to his share of this claim. It therefore became necessary to investigate the national status of Mr. Goss' two sisters in order to ascertain whether, or not, a share of the award would survive for their respective benefits.

It has now been ascertained that Mrs. Lowe became a citizen of the United States in 1942. She would therefore neither be eligible to receive a portion of the award, nor would she be competent to assign it to anyone else. The one-sixth share of the total award, for which she would have been eligible if she had been a Canadian citizen at time of presentation of the claim, accordingly lapses.

Mrs. Mary Goss Galloway also became a citizen of the United States, but not until 31st January 1955. As she was born in Canada and retained her Canadian status until that date, she would be a Canadian citizen at time of presentation

of the claim, and would therefore be eligible to receive one-sixth of the total award. She has now assigned and transferred her share in the award to the claimants for their sole benefit in equal shares.

Mrs. Ethel Munro Goss was born at Toronto, Ontario on 21st March, 1878, and she is deemed to have been a natural born Canadian citizen at time of presentation of the claim. She has therefore competently transferred and assigned her share of the claim to the claimants.

The claimants have therefore become eligible beneficiaries of five-sixths of the compensation to which their sister, Mrs. Lorna Margaret Faulds Goss, would have been entitled if she had lived, and it accordingly becomes necessary to reduce the recommended award by one-sixth, which represents the lapsed share of Mrs. Enid Goss Lowe. I accordingly amend my report of 31st January 1955, and also vary the recommendation of the learned Deputy Commissioner to that extent.

I now recommend that the claimants, as administratrices of the estate of Lorna Margaret Faulds Goss, be paid \$1,833.33 as an award for loss of personal property of the said Lorna Margaret Faulds Goss at the sinking of the SS "Lady Hawkins", such payment to be in order of Priority No. 3(a), and to bear simple interest from 19th January 1942 at 3% per annum, and to be for the benefit of Mrs. Lois Imlah Norman and Miss Flora Jean Faulds in equal shares (including the shares of the estate of John Munro Goss assigned to them by Ethel Munro Goss and Mary Goss Galloway).

Dated this 24th day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4527

Re: Elliott

The grievance of the claimant is that he is not allowed any maltreatment award in respect of the time spent in the custody of the Russians. Admittedly, the hardships endured in that period may have been even more severe than those suffered in many periods of custody by the Germans but hardships in the custody of the Russians obviously do not constitute maltreatment, whose essence is improper conduct on the part of an enemy captor. It is unfortunate that this claimant cannot be compensated for the rigours of an exceptionally long and severe box-car trip, and for other privations endured after liberation by the Russians...

Dated this 5th day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4672

Re: Rudyk

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review. The claimant intimates that he did not suffer any maltreatment or indignity at the hands of his captors, and that he had filed his application on the strength of a news report to the effect that all former prisoners of war would receive a basic

payment irrespectively of maltreatment. The basic award was, of course, available only in cases where the general presumptions of maltreatment recognized by my Report under P.C. (1953) 857 were not rebutted by the circumstances of the individual case. One group of cases in which the presumptions are considered by the Commission to have been rebutted, is the group in which claimants were hospitalized for practically the whole period of their detention, and have not submitted evidence of undue lack of care or other specific maltreatment.

For the reasons mentioned by the Deputy Commissioner, I therefore approve his report and recommend that this claim be disallowed.

Dated this 9th day of March, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4699

Re: Primeau

These claims were originally referred for hearing to Deputy Commissioner Choquette. The hearing took place at a time when the somewhat fragmentary information available to the Commission indicated that the portion of the claimants' detention at Zikawei was spent in a camp operated by the Japanese. On the strength of the information then available, the learned Deputy Commissioner reported that the claimants had been interned for 651 days and 688 days respectively in a camp operated by the Japanese at Zikawei, although he held that the period of detention at Suchow constituted only house-arrest or enforced residence under enemy supervision. He accordingly recommended a per diem maltreatment award in the sum of \$651.00 to Rev. Adrien Lavarière, and of \$688.00 to Rev. Ls. Jos. Primeau. In the case of Rev. Primeau, who had made additional claims for personal injury and for loss of property, the Deputy Commissioner recommended disallowance of those additional claims.

Copies of the learned Deputy Commissioner's reports dated 1st June 1954 were furnished shortly afterwards to the claimants respectively.

The Deputy Commissioner's reports then came before me for review. In the light of fuller information which had then reached the Commission respecting conditions of internment of Zikawei, I appointed Deputy Commissioner Choquette as Special Examiner for the taking of more detailed viva voce evidence in relation to the review of these two claims. The claimants were accordingly notified that a second hearing would be held, and the second hearing, at which the claimants both appeared and gave evidence, took place at Montreal on 4th October 1954.

It may be pertinent at this point to refer to the contents of a memorandum submitted by counsel for the claimants to the Honourable, the Minister of Justice, in which he refers to the proceedings in these two claims in the following terms:

"At first two of the claims were accepted by the Commission; the claimants, notified accordingly, were expecting cheques to pay such indemnities when, in face of the many claims to come for damages sustained in similar cases by so many people, the Commission reversed the decision and again ordered another hearing after which a report was sent to the effect that the original decision regarding those two claims was reversed and that the claims of the fifty odd other members of the same congregation were also rejected."

It is clearly not correct to say that the two claims were accepted by the Commission, as review by the War Claims Commissioner had not been completed. The claimants therefore had no ground to expect their cheques, as they

had been clearly notified that the findings of the Deputy Commissioner were still subject to review by the Chief Commissioner. Nor is it correct to say that the Commission reversed the decision and again ordered another hearing. The original decision of the Deputy Commissioner was not at that time reversed but the further hearing was directed for the purpose of obtaining additional and more detailed information. Nor is it correct to say that a report was sent to the effect that the original decision regarding those two claims was reversed; no such notification was sent until my letter of 14th February 1958 to which I will later refer. Nor is it correct to say that a report was sent that the claims of 50 odd other members of the same congregation were also rejected; it is true that a copy of the Deputy Commissioner's recommendations to that effect was sent in the other cases, but those recommendations were still under review by the Chief Commissioner until a considerable time after the submission of the memorandum to the Minister or Justice.

After careful consideration of the materials and evidence submitted at the second hearing held before Deputy Commissioner Choquette as Special Examiner, I was of the opinion that the detention of the claimants at Zikawei Civic Centre amounted to house-arrest or enforced residence under enemy supervision, and that the place of detention there was not a camp operated or directly controlled by the Japanese. I accordingly notified the claimants by letter to their Counsel dated 14th February 1958 that I considered it necessary to reverse the Deputy Commissioner's recommendations for per diem maltreatment awards, and to recommend disallowance of the maltreatment claims. The claimants have not submitted any additional materials in response to this notice, but have indicated that the arguments submitted on review of similar claims by members of the Jesuit Order should apply with equal force to these two claims. Counsel for the claimants further intimates his readiness to attend additional hearings if the Commission regards them as being necessary for the equitable decision of the claims, but gives no intimation that any additional evidence is now available for presentation at such further hearing. The Commission does not know of the availability of any additional relevant evidence, and can therefore see no object in the holding of a further hearing in addition to the exhaustive second hearing already conducted. I have carefully considered the maltreatment claims in these two cases, both in the light of the evidence specifically submitted in these cases, and in the light of the general evidence, materials, and arguments submitted in the numerous cases of other Jesuits who were detained at the Zikawei Civic Centre. I have exhaustively reviewed such materials in my report on case No. 6078 Rev. Rosario P. Renaud. For the reasons set forth in the report of Deputy Commissioner Choquette in that case, as well as in my own recommendation on the same case, I see no alternative but to conclude that detention of the claimants in the Zikawei Civic Centre did not constitute internment in a camp operated or directly controlled by the Japanese, and therefore did not entitle the claimants to automatic per diem maltreatment awards. I similarly conclude that the claimants have not established any serious or actual maltreatment such as would be compensable under the provisions of the War Claims Rules.

I therefore reverse the recommendation of the Deputy Commissioner on the maltreatment claims in these two cases, and I recommend that the maltreatment claims be disallowed.

Since no maltreatment is established, the claim of Rev. Ls. Jos. Primeau for resulting personal injury must also be disallowed, and for that reason, as well as the reasons mentioned by the learned Deputy Commissioner, I recommend accordingly.

As to the claim of Rev. Ls. Jos. Primeau for loss of property, the learned Deputy Commissioner recommended disallowance of this claim on the ground

that it should have been made by the Jesuit Order to which the claimant belonged at the time of the loss. An examination of the items whose loss is alleged indicates that some of the articles concerned were such as would belong to the furnishings of a church or other place of religious worship. They would therefore obviously belong to the religious Order concerned. Others of the lost articles, however, were in the nature of personal belongings, which in the absence of vow of poverty might naturally belong to an individual member. In cases of loss of such personal belongings, the Commission has more recently adopted the procedure of allowing the individual members of religious Orders (though bound by a vow of poverty) to present a claim for the loss sustained, leaving it to the individual members and the Order to determine the ultimate equitable entitlement to any awards which may be made.

Following that line of procedure, I am now inclined to the view that an award may properly be made to the claimant Rev. Ls. Jos. Primeau, on the understanding above mentioned. Of the articles whose loss is claimed, approximately \$500 would obviously fall in the category of ecclesiastical property, whereas the remaining \$1300 might properly be classed as personal belongings. Following the principles of the War Claims Rules that loss of property must be assessed on the basis of actual market value, with due allowance for depreciation, I would assess the compensable loss of personal articles at \$1040, and (subject to arrangement to be made between this claimant and the Jesuit Order) I would find that he suffered a compensable property loss in that sum. The other items will remain open for consideration from the point of view of a possible award to La Société de Jésus du Bas-Canada.

I therefore vary the recommendation of the Deputy Commissioner as to the property claim, and I recommend that Rev. Ls. Jos. Primeau be paid \$1040.00 as an award for loss of property in China, such payment to be in order of Priority No. 3 (a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 14th day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4701

Re: J. Kaufman Limited

A first recommendation on the present claim was made on June 25, 1955. Further evidence having been supplied by the claimant, the claim has now been submitted to the undersigned for reconsideration. The evidence in question consists of the following documents:

(a) A letter from Thomas Meadows & Co. Ltd., dated Le Havre, November 6, 1954, certifying that the goods in question were delivered by this firm to shed No. 17 at Le Havre for loading on the SS "Ringulv" which was due to sail at the beginning of June 1940 and that the said firm, after the exode, was unable to find any trace of these goods; and

(b) A letter from the Compagnie Generale Transatlantique, dated Le Havre, November 7, 1954, certifying that the said goods were duly delivered to shed No. 17 at the beginning of June 1940 for loading on the SS "Ringulv" which was due to sail on June 10th of the same year, and that the crate which had contained the goods was found after the exode empty of its contents;

Considering that this further evidence fills the gaps which occurred in the evidence submitted previously and sufficiently establishes the presumption of theft or looting which arises from the disappearance of belongings in an active theatre of war (R.A.C. p. 57, para. 2);

Considering that the amount of \$2,173.80 is a reasonable estimate of the market value of the goods at the time of their loss and that the claimant has grounds for claiming this amount minus the sum of \$479.33 which he received from his insurance agents, i.e. a total balance of \$1,694.47;

Considering therefore that there is reason to revise the recommendation of June 25, 1954 and to satisfy the claimant's claim to the extent of the said amount of \$1,694.47;

From the foregoing:

The undersigned recommends that a sum of \$1,694.47 plus interest at 3% as from January 1, 1946 be paid to the claimant as an award for loss of property.

Quebec, July 26, 1955.

FERNAND CHOQUETTE
Deputy Commissioner

NOTE:—*Recommendation approved by Chief War Claims Commissioner subject to W. C. Reg. 4(4)—22nd November 1955.*

CASE No. 4749

Re: *Green*

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

The claimant has also been notified, under the provisions of Rule of Procedure No. 20, that it might be necessary to revise downward the Deputy Commissioner's award, in the following respects:

- (a) By a deduction of depreciation from the value allowed for the lost articles, to bring such valuations in line with those usually allowed by the Commission;
- (b) By deduction of an amount which the claimant should have received if he had taken the precaution of insuring his goods against war risk.

As to (a), I have carefully considered this aspect of the case, and have reached the conclusion that it is necessary to deduct, say, twenty per cent from the valuations allowed by the Deputy Commissioner. If this deduction is applied to the articles lost, exclusive of cash, the total valuation is reduced to \$836.00. On a survey of numerous similar cases, I believe this amount is at least fully in line with what is generally allowed by the Commission in comparable circumstances.

As to (b), I have also carefully considered this point. In answer to my notice under Rule of Procedure No. 20, the claimant states that he carried no insurance on his personal belongings, as he was not aware that war risk insurance was available. Though it was the part of prudence to carry insurance in such circumstances, I have reached the conclusion that it was not the practice of the ordinary normal traveller to do so. I shall therefore not deduct the amount which a war risk insurance policy would have yielded. I must point out, however, that this exemption applies only to private chattels carried with a traveller or in his baggage, and does not extend to goods shipped as cargo.

With the foregoing variation, I approve the report of the Deputy Commissioner and I accordingly recommend that the claimant be paid \$836.00 as an

award for loss of personal property at the sinking of the M.V. Munster, such payment to be in order of Priority No. 3 (a), and to bear simple interest at three per cent per annum from 7th February 1940.

Dated this 31st day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 4948

Re: White

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has omitted submission of further materials.

This is one of a group of cases in which the period of custody was short, and this fact, combined with the absence of evidence disclosing any really serious maltreatment, was considered to rebut the general presumptions of maltreatment recognized by my Report under P.C. (1953) 857. I have purposely reserved my review of this group of cases until a late stage in the adjudication of prisoner of war claims, in order that special consideration might be given them as a group. As a result of this special consideration, I have come to the conclusion that the privations and exposures to which prisoners who were captured during the last few months of the war were subjected were in many cases extremely severe, and caused not only immediate discomfort and suffering, but some degree of incapacity to work persisting after liberation. For this reason I am of the opinion that in such circumstances a claimant may be entitled to a maltreatment award even if his period of imprisonment was, by comparison, very short.

On a careful review of this claim on the foregoing basis, and in comparison with other claims of a somewhat similar nature, I have reached the decision that this claimant is entitled to an award of \$59.00. He is deemed to have been a Canadian at all relevant times.

On the basis of this group review, I would therefore reverse the recommendation of the Deputy Commissioner, and I accordingly recommend that the claimant be paid \$59.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 19th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5068

Re: Cottenoir

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant relies specifically on an announcement that the normal minimum of an award for maltreatment of a prisoner of war in Europe was to

be \$200.00. At the time of that announcement it was not contemplated that it would be possible to recommend awards for prisoners who were in custody for periods approximating that of the claimant's, as it was thought that such a short period of detention would in itself rebut the general presumption of serious maltreatment. More recently, as stated in the report of the learned Deputy Commissioner, the Commission has adopted the view that in a number of cases of short detention, there were certain incidents of maltreatment which entitled the claimant to a moderate lump sum compensation, in spite of the rebuttal of the general presumptions. For this reason, it is possible to make to the claimant a grant of a moderate lump sum, in spite of the fact that his evidence has not disclosed such long or serious maltreatment as would entitle him to the normal minimum of \$200.00. In other words, if it had not been for this subsequent revision of procedure, it might have been necessary for the Commission to disallow this claim altogether.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that the claimant be paid \$60.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 27th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5225

Re: Hosking

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant was hospitalized during the whole period of his internment. He complains of "lack of proper food, drugs, heat, water, bed clothing, x-ray treatment, sleeping on straw palisades and wooden slats for a hospital bed." The claimant's hospitalization was in the New Lazarette hospital at Stalag VIII B. The only one of these complaints for which there is any measure of corroboration is that of the straw palisades and wooden slats. As this was the type of bed provided for all patients, it is difficult to say that it constituted any specific measure of maltreatment.

There is, in addition, evidence that the claimant was transported on one occasion by box-car.

The claimant confines his present submissions principally to a comparison with awards granted to four other claimants. An examination of the other claims reveals the fact that two of them disclose entirely different incidents of maltreatment, and that the other two are supported by much stronger and more detailed evidence than is furnished by the claimant.

Giving the claimant the benefit of the box-car transportation, and of some degree of undue privations during his hospitalization, I would find that he was subjected to some degree of maltreatment, which aggravated his incapacity subsisting after liberation. I would accordingly recommend a nominal award of \$70.00.

I therefore reverse the recommendation of the Deputy Commissioner and recommend that the claimant be paid \$70.00 as an award for maltreatment of himself whilst a prisoner of war in Europe.

Dated this 20th day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5300

Re: *Burdock*

This is a claim for an award of damages alleged to have arisen from the sinking of the Motor Vessel *Andavaka* on the Grand Banks on the 9th July 1941.

The claimant has established that he was a Canadian Citizen at the time of the presentation of the claim and that he possessed a Canadian National status, within the meaning of the War Claims Rules, at the time of the act causing the loss or damage complained of. I heard the verbal evidence of the Master, the Mate, the Engineer, and one other member of the crew. And while more than 13 years have elapsed since the event of sinking took place, I was able to get from the witnesses a reasonably satisfactory picture.

From the evidence it appears that the *Andavaka* was owned by the claimant and being operated, as a fishing vessel on the Grand Banks, by John Brinton its Master and 14 other crew members. In the early morning of July 9th 1941, she was lying at anchor in a thick fog at about 160 miles southeast of Cape Race on the Grand Banks. After daybreak, when the Captain was going down for breakfast, on inquiry, he was told by the watch that he heard a sound of a steamer. This sound appears to have been in addition to the sound of the horns of the fishing vessels which were all around. In not more than 10 minutes, when the Captain returned from breakfast, he inquired of the watch if he had heard any further sounds. The watch indicated that he had heard sounds in two different directions. The Captain, realizing that a convoy might be approaching, ordered the boats to be lowered while he attended to ringing the Ship's bell; the Mate kept sounding the fog horn, and a third party repeatedly fired a gun. In a very brief period of time a ship appeared through the dense fog coming directly towards the *Andavaka*. The other crew members were in the boats and the Captain, Mate and third member just got into one and pulled clear when the *Andavaka* was struck and she sank within a few minutes. The crew members were picked up by the British ship *Circassia*, which had sunk their vessel, and after 9 days were landed in Iceland and later returned by Naval ships to Newfoundland.

In lying at anchor, the *Andavaka* was doing a normal act in a fishing operation and from the time when its crew heard the signals of the approaching convoy, it was impossible to lift anchor or to do anything else towards getting out of the way. And even if the *Andavaka* had been capable of moving immediately, there is no reasonable certainty that any manoeuvre which might have been made would not have resulted in equal or more disastrous results by collision with the *Circassia* or any other of the 64 ships which made up the convoy. If the sinking of the *Andavaka* had resulted from the negligent action of its crew, the claimant's action for compensation out of the War Claims Fund should fail, but I do not find that its loss was attributable to the negligence of the crew. On the other hand, the success of the claim does not depend upon a finding of negligence on the part of those responsible for the operation of the *Circassia*, but upon a finding that the loss resulted from an act of actual warfare as described by the War Claims Rules.

The term "actual warfare" is not defined in the Report of the Advisory Commissioner nor do I find it used in decided cases. The terms most commonly used in the cases are "hostilities" and "warlike operations". "Hostilities" and "acts of warfare" are commonly considered to be synonymous terms; however none of the decided cases which I have been able to find have turned on a decision as to the meaning of the term "hostilities" alone but on the meaning of words "hostilities or warlike operations" usually found in English Charter party agreements, where vessels were requisitioned by The Admiralty, with the decision apparently turning on the meaning of the latter phrase. It has been held that the term "warlike operations" have a much wider reach than the term "hostilities". See the judgment of Lord Atkinson in the *British Steamship Co. v. The King*, (1921) A. C. 99, at p. 114. And, although it was held by the Supreme Court of Canada in *The Queen v. The Nisbet Shipping Co.*, (1953) S. C. Reports 480, that a warship going to take up position in a convoy was not engaged in a "warlike operation", but, in the words of Kerwin, J., as he was then, at page 492, "in something anterior and preparatory", there seems little doubt that the ships of a convoy as distinguished from ships sailing in convoy are engaged in a warlike operation. The former have been likened to the shepherds and the latter to the sheep which are being shepherded. Lord Atkinson said in *British India Steam Navigation Co. v. London War Risks Insurance Ltd.* (1921) 1 A. C. 99, at pp. 118-119:

"From the report of the case before Bailhache J. (1) he seems to have based his decision on the view that to sail with a convoy is in itself a warlike operation, not only on the part of the ships of war which compose the convoy, but also on the part of the merchant ships convoyed, and that no negligence contributing to the disaster having been proved either against the master and crew of the *Matiana* or those of any of the ships of war, the loss of the *Matiana* was a war risk. He states his view clearly in the following passage of his judgment: 'To sail with convoy is, in my opinion, a warlike operation. The assembling of the ships to be convoyed, and of the men-of-war to convoy them, the voyage of the whole flotilla, the route chosen and the precautionary measures taken on the voyage must be taken together as all part of a warlike operation. In this case the vessels pursued a zigzag course, and were sailing at the time through a submarine-infested area, and some 30 miles to the northward of the ordinary peace time course. The stranding happened in the course of this warlike operation, and, subject to another point made by the war risk underwriters, was directly due to it.' With all respect, I am quite unable to concur in the learned judge's view that the merchant ships convoyed, whose task was simply to sail peacefully on the course they might be directed to follow, and to keep their proper places in the convoy, became so identified with the ships of war directing and protecting them, as to be treated as members of a joint flotilla engaged in a common enterprise. I concur with Atkin L.J. in thinking that the learned judge treats as he said the sheep and the shepherd as both engaged in the operation of shepherding. The duties and proper tasks of convoying warships and the ships they convoy are respectively indicated in ss. 30 and 31 of the *Naval Discipline Act* of 1866 (29 & 30 Vict., c. 109). The naval officers are to diligently perform the duties of convoying and protecting the ships they are appointed to convoy according to instructions, to defend these ships and the goods they carry without deviation, to fight in their defence if they are assailed and not to abandon them or expose them to hazard. Every master or other officer in command of any merchant or other vessel convoyed is bound to obey the commanding officer of the ships of war in all matters relating to the navigation or security of convoy, and is also bound to take such precautions for avoiding

the enemy as may be directed by this commanding officer. It does not appear, however, that this latter officer has any power to require the master, officers or crew of any merchant ship which is being convoyed to take combative action against a vessel of any kind, or to join in such action if taken by all or any of the ships of war. *The roles of the two classes of ships are entirely different in nature and character. That of the ships of war is protective and if need be combative; that of the merchantmen is not at all combative; and as far as the circumstances permit is as peaceful in nature and character as would be their enterprises in time of peace.*"

The italics are mine because I think the words indicate Lord Atkinson's view that the attendant warships were engaged in warlike operations.

Having reached the conclusion that when the *Circassia* sank the *Andavaka* the former was engaged in a warlike operation, I must now determine whether its operation came within the meaning of the term of "an act of actual warfare" as found in the report of the Advisory Commissioner. At page 57, in dealing with claims for loss of property, all of the consideration respecting death claims and claims for personal injuries are expressly incorporated into the former. At page 30, after setting forth some cases of very remote damages, the Report states:

"No clear or well established principles have been laid down for assistance in answering such questions. The best that can be done is to keep in mind certain considerations. One is that almost all activities of persons in a nation during war time are in some way connected with the war, that obviously not all deaths or injuries occurring in these activities can be compensated for, *and that there must be some immediate connection between the death or injury and activities of a peculiarly wartime nature as distinguished from civilian activities directed to wartime ends.*"

If the report were intended to mean that only those losses which resulted from acts of attack or defense in open war are to be compensable, the italicized words would be unnecessary and meaningless. But they are capable of complete application when applied to the convoying of ships. Ships sailing in a convoy and carrying goods may well be "carrying on civilian activities directed to wartime ends" while by no stretch of imagination may it be said that a ship of war protecting civilian ships from attack could be said to be carrying on civilian activities but may well be held to be engaged in activities of a peculiarly wartime nature.

In my opinion, by a reasonable interpretation of the War Claims Rules, the claimant is entitled to compensation for any loss which he suffered in the sinking of the *Andavaka* by the *Circassia* in the circumstances above disclosed.

In his statement of claim the claimant alleges the amount of his loss as \$14,238.16 as follows:

Vessel and engine	\$12,000.00	
Fishing outfit	3,170.19	
Prospective catch, this amount the vessel had on board at time of accident	6,720.00	
Loss of earning power for balance of season	6,000.00	
Received from Insurance		9,774.25
Received from Admiralty		3,877.78
Loss claimed		14,238.16
	<hr/>	<hr/>
	\$27,890.19	\$27,890.19

Although placed last on the list by the claimant, I shall deal first with the claim for \$6,000.00 which he estimates would have been his profit for the remainder of the fishing season if the vessel had not been sunk. Claims of this nature are expressly dealt with at pages 62 and 63 of the Report of the Advisory Commissioner, wherein it is pointed out that such claims have been rejected both after World War I and under international arbitrations. In Case No. 1450, *Re International Petroleum Company Limited*, reported at pages 572 and 573 in *Reparations Vol. II*, Commissioner Friel says: "Claims for loss of profits and war risk insurance are not recognizable by this Commission". Therefore, I must recommend disallowance of the claim for loss of future profits.

As to the vessel, no expert evidence was given before me of its value, but from the evidence of the claimant it appears that she was a wooden vessel of 57 tons and was built at Gornish in Newfoundland in 1936 and was purchased by the claimant in 1940 for about \$6,000.00. She would, at the time of the purchase, have suffered 4 years' depreciation or about one-fifth of her original value, and from the time of purchase until her loss she would have suffered an additional year's depreciation which, on basis of her original value, would be approximately \$375.00. And thus her depreciated value would have been approximately \$5,625.00. In 1940, the claimant installed a new 20 horsepower diesel engine at a cost of \$1,250.00, and this too would normally have suffered at least \$150.00 by way of depreciation before the sinking, so that the total depreciated value of the vessel and engine would have been approximately \$6,725.00. However, since the War Claims Rules provide that the measure of compensation for losses on the high seas should be the reasonable market value at the time and place of loss, and since it is notorious that the market value of ships rose during the early period of war, it should be found that, from the time of purchase until the loss, the value of the vessel had increased notwithstanding that ordinarily it would have decreased by reason of depreciation. While the claimant in his claim to the Admiralty dated October 15, 1941, alleged that the cost would have increased by at least 50% from the time the ship was built in 1936 until her loss, I do not feel called upon to cover that whole period since there is no evidence of the purchase having been under value, the sale price in 1940 may reasonably be taken as the then market value. And, therefore, the increase in market value which I feel called upon to consider is that which occurred between the time of purchase and the loss. That increase would most probably have ranged under 30%, so that a fair estimate of the market value would be \$8,600.00, and I fix the value of the vessel and engine at that figure which incidently is very close to the value placed on it by the British Admiralty.

The claimant carried \$5,500.00 in insurance on the vessel upon which he had paid \$617.00 in premiums. The insurance was paid in full but the claimant, in setting out his loss, deducted the amount of the premium and credited the insurance at \$4,983.00. War risk insurance premiums are expressly stated not to be recoverable under the War Claims Rules and no one has ever heard of any insurance company repaying the insurance premium with the amount of loss payable under the policy. Insurance premiums must be considered as operational expenses. The full amount of \$5,500.00 must, therefore, be deducted from the fixed value of the ship, and his loss in respect thereof is reduced to \$3,100.00.

In his statement of claim the claimant sets the value of the fishing outfit on board the vessel at \$3,170.19, and gives a detailed statement of the items which make up the amount. At the hearing, I examined him at some length concerning this part of his claims and I am satisfied that the items mentioned were placed on board the vessel before she sailed, and that the values given are fair and reasonable. However, he admitted that he had not made any deductions because of the consumption of the supplies while the vessel was at sea. These

include \$101.45 for fuel, grease and oil; \$46.00 for hard coal; \$432.00 for salt; and \$286.89 for food. As to the fuel and hard coal, I am satisfied from the evidence that only a small part had been consumed. It was admitted, however, that most of the salt had been used in salting the catch of fish, and to feed the 15 men from the time the vessel left port would have taken somewhere between one-third and one-half of the food supplies. I think, that after making allowance for the value of such consumable supplies, a fair value for the equipment and supplies would be \$2,550.00. Against that loss the claimant received by way of insurance \$1,750.00, leaving his net loss at \$800.00.

I next deal with the claim in respect of cargo of fish on board the vessel when sunk. In his statement of claim, and in a claim against the Admiralty, the claimant placed his estimate of the amount of fish on board when the vessel was sunk at 600 quintals or 60 long tons. Two members of the crew in evidence given before me, estimated the amount at 800 quintals. There would, therefore, seem no doubt that the claim of 600 quintals or 60 long tons is reasonably justified. Although the claimant stated in evidence that the catch had been sold in Lunenburg at 5 $\frac{3}{4}$ cents a pound, his claim to the Admiralty was that the price delivered at Lunenburg was 5 cents a pound. At this latter price the claim of \$6,720.00 is well founded.

On the cargo the claimant carried \$3,500.00 insurance and he recovered that amount so that the actual loss thereon was \$3,220.00, and the total loss as assessed on the several items was \$7,120.00. Under the War Claims Rules as laid down in the Report of the Advisory Commissioner at page 67 the owners of the ships and cargoes are entitled to recover only excess of loss over and above the amount of insurance which they might reasonably have been expected to carry. The claimant had just become engaged in the fishing industry and the insurance carried was all that his financial standing at the time would permit and, therefore, I do not think that, in the circumstances, he should be classed as negligent owner who failed to effect insurance.

In 1941 and following his loss, the claimant filed a claim with the British Admiralty which, although repudiating liability, made an *ex gratia* award to the claimant from which he netted \$3,877.78 after the several insurance companies had been reimbursed their proportionate shares in respect of the moneys paid under their policies and the crew had been paid a proportionate share of their loss of personal belongings and all necessary expenses had been paid. And under the War Claims Rules that sum comes within the meaning of compensation otherwise obtained and must be deducted before any award is made out of the War Claims Fund. The amount payable to the claimant is, therefore, \$3,242.22, which amount I recommend be paid to the claimant together with simple interest thereon at three per cent per annum from the 9th day of July 1941. This amount, however, should be paid to the claimant in trust for the members of the crew, because the enterprise was carried on under a sharing profit contract of which, on the basis of the claimant's letter dated August 16, 1954, the Captain was entitled to 6% of the gross \$6,720.00, and the balance divided one-half to the crew, including the Captain, and the remaining one-half to the owner. On that basis the claimant's share would have been \$3,158.40. And thus his total personal loss on the above assessment was \$14,308.40 against which he received \$10,750.00 in insurance and \$3,877.78 from the Admiralty, or a total of \$14,627.78, while the members of the crew received only part of the Admiralty's *ex gratia* award towards compensation for loss of personal belongings.

Dated this 25th day of October, A.D. 1954.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further evidence in support of the contention that the Deputy Commissioner's award should be varied.

From the evidence taken before the learned Deputy Commissioner, it appeared that the claimant had received the whole of the sum of \$3,500.00 paid by an insurance company for the loss of the cargo of fish which was sunk with the "Andavaka". The claimant now presents an affidavit, supported by certificates from Captain John Brinton and two members of the crew of the "Andavaka", indicating that the whole of the insurance money was not retained by the claimant, but that it was distributed in the following orders of priority:

Payment of insurance premium, about	\$ 225.00
Payment of Commission to Captain Brinton, 6%, about	294.55
Payment of shares to crew members, 15 at about \$101.05 each	1,515.75
Balance retained by claimant, about	1,464.70
	<hr/>
	\$3,500.00

This new information leads to a variation of the Deputy Commissioner's report to the extent that the items of the award dealing with the loss of the vessel (\$3,100.00) and of her equipment and supplies (\$800.00) should be recommended for payment directly to the claimant in his own right, subject to the appropriate deduction and priority regulations.

As to the claim respecting loss of cargo, the claimant must be taken to be making this claim in a representative capacity, and the captain and members of the crew appear to be satisfied that he should do so. This is probably a corollary from the terms of the agreement between the owner and the crew. In order, however, to apply the appropriate orders of priority, it is necessary to segregate the amounts to which the captain and crew members will be beneficially entitled. This segregation would apparently result in the following distribution of the \$3,220.00 recommended for balance of loss of cargo:

Captain John Brinton, commission 6%	\$ 193.20
Share of 15 crew members at about \$100.89 each	1,513.40
Residual share of claimant	1,513.40
	<hr/>
	\$3,220.00

As the total individual benefits of the captain and other crew members from all sources of compensation will not exceed \$2,500.00 each, the portion of the award for distribution among them should be paid in order of Priority No. 3(a).

As the total compensation to the claimant in his own right will be \$5,413.40, the payment of that portion of the award should be in orders of Priority Nos. 3(a), 3(b), and 4.

With the foregoing variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

- (a) In his own right, \$5,413.40 as an award for loss of property at the sinking of the MV "Andavaka", such payment to be in orders of Priority Nos. 3(a), 3(b), and 4, and to bear simple interest from 9th July 1941 at 3% per annum; subject to deduction of \$3,877.78 received from the British Admiralty, with interest adjustment from 15th May 1943;

- (b) In trust for Captain John Brinton and the crew members of the MV "Andavaka", the sum of \$1,706.60, for loss of their respective shares in the cargo of the MV "Andavaka" at the time of its sinking, such payment to be in order of Priority No. 3(a), and to bear simple interest from 9th July 1941 at 3% per annum.

Dated this 4th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5314-5

Re: Blair

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report and have waived presentation of further materials on review.

As these claimants originally made a joint claim for compensation for loss of property, and on the basis of that joint claim received a joint *ex gratia* payment from the Government of the United Kingdom in the undistributed sum of \$804.00, it would now appear simpler and more equitable to reconsolidate these claims for the purpose of finalizing the present award. This course will have the additional benefit of enabling the claimants to receive the benefit, which has not been accorded them by the Deputy Commissioner's report, of interest on the gross award from the date of the loss until receipt of the United Kingdom payment.

Although the claimants have expressed a willingness to accept the awards recommended by the Deputy Commissioner, they apparently do so reluctantly, and in the belief that a larger amount should have been recommended. On a careful examination of the valuations assessed by the Deputy Commissioner for the goods lost, I find that they are fully in line with those recommended by the Commission in analogous cases, particularly since it appears that the losses now valued by the claimants at \$1,702.00 were itemized and valued by them at \$1,500.00 on 29th January 1940 when their recollection would presumably be more accurate than at the time of the present valuations in 1953. It is particularly noted that their joint cash, now estimated at \$200.00, was estimated in 1940 at \$150.00 besides some silver in change.

There is, however, one item disallowed by the learned Deputy Commissioner which, I think, might deserve reconsideration. This is the claim for \$70.00 loss of salary occasioned by a delay of two weeks in David P. Blair's return to work after the disaster. In similar cases, the Commission has allowed such an item, up to but not exceeding the two weeks' delay which normally occurred. The Deputy Commissioner rejects this item as not being compensable within the War Claims Rules, and makes no finding as to the actual occurrence of the loss. I am, however, prepared to accept the claimant's statutory declaration, which was presumably confirmed by his oral evidence before the Deputy Commissioner. I would therefore re-instate the item, but would reduce it to the \$65.00 at which it was listed at the time of the original claim in 1940. The total joint award may therefore be summarized as follows:

1. Loss found by Deputy Commissioner in case of David Philip Blair: ..\$	385.00
2. Loss of quasi-property in form of loss of wages:	65.00
3. Loss by Amelia W. Blair:	890.00
	<hr/>
	\$1,340.00

With the foregoing variation as to consolidation, and interest, and loss of wages, I approve the reports of the Deputy Commissioner, and I recommend that the claimants be paid jointly \$1,340.00 as an award for loss of property and quasi-property at the sinking of the S.S. "*Athenia*," such payment to be in order of Priority No. 3(a) and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$804.00 received from the Government of the United Kingdom, with interest adjustment from 10th December 1947.

Dated this 21st day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5317

Re: Campbell

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and on review has submitted further argument in support of the contention that the Deputy Commissioner's recommendation should be reversed and the claim allowed. The claimant contradicts several marginal recitals in the report, but does not dispute the main fact that he is employed by the Canadian National Railway at \$250.00 per month, with the customary social security. In such circumstances, the son, who would now be 33, would probably, if he had lived, either be married or engaged in some business enterprise which would require his available funds.

Having carefully reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that this claim be disallowed.

Dated this 28th day of June A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5324

Re: H. L. McKinnon Company Limited

The claimant is a corporation by letters patent under laws of Manitoba with headquarters in the City of Winnipeg and seeks an award of compensation for alleged loss at Hong Kong of 425 bags of African coffee.

I find from the evidence that the claimant corporation was Canadian in residence and trading activities at the time of the presentation of the claim and at the time of the loss complained of.

The evidence discloses that the claimant was engaged in, among other things, wholesale trading in tea and coffee and on 15th March 1941 it had purchased 425 bags of Kenya Clean Coffee from Naumann, Gepp, Derman & Company in Nairobi, which was shipped from the Port of Mombassa to Hong Kong for transshipment there to Vancouver. The shipment arrived at Hong

Kong in April of 1941 but, due to the growing tension in international affairs, immediate transshipment to Vancouver could not be made.

From the record it appears that Java authorities had ordered all Dutch ships into home or neutral ports leaving the ships of the Blue Star Line as the only shipping facility in the East. Two of their ships eventually reached Hong Kong and were about to load when the American Government ordered them to return. The goods remained in Hong Kong until that Port was occupied by the Japanese Forces. No subsequent trace has been found and loss through looting may be presumed.

It is suggested that the claimant's loss is not compensable under the War Claims Rules as coming within either category 24 or 34 as set out at pages 68 and 72 of the Report of the Advisory Commission. With respect I do not think that either of those categories is applicable in the present claim. As to the former category, while the orders of the Java and United States authorities did, in fact, stop immediate transshipment and may have caused the claimant a loss of profit had they arrived, this claim is for the actual loss of the goods which may be assumed to have been in proper storage and, barring evidence to the contrary, to have been in good condition at the time of the Japanese occupation following which looting is, under the Rules, presumed. I think, with the history of British ingenuity in matters of commerce, it would be too much to say that, had Hong Kong not been occupied, all trade with that city would have been indefinitely shut off and all goods would have been allowed to perish for want of shipment. I think that the claimant's loss ought not to be attributed solely to allied orders.

As to category 34, it is admitted that if the claimant were seeking to be compensated for loss due to being compelled to sell the coffee in Hong Kong or elsewhere, his claim would be barred as coming within the category, but, again this claim is for the value of goods which wholly disappeared as a result of enemy action.

In my opinion, the claimant has suffered compensable loss within the War Claims Rules.

As to the quantum of loss, the claimant in its statement of claim gives it as \$7,453.09, but a letter of the shipper dated November 12, 1953 acknowledges receipt of £1,388.5s.11d on May 6th, 1941 which at the then buying rate of \$4.47 per pound sterling would be \$6,157.35 which amount includes freight to Vancouver and insurance during shipment.

Although that portion of the freight from Hong Kong to Vancouver had not been used up, no rebate was payable to the claimant under the terms of the bill of lading. The cost of insurance £39 5s or \$174.48, is not recoverable under the War Claims Rules and must be deducted, leaving the net claim at \$5,981.87.

Under the terms of the policy of insurance, the goods were insured against loss while on ship and for a 15-day period after arrival at Hong Kong and while there awaiting transshipment. The claimant did not insure the goods when its shipping coverage expired. It is possible that for a while, at least, insurance could have been placed for a number of consecutive 15-day periods but the rate would have been 10% for each such period and thus by September, if insurance were still available, the value of the goods would have been paid out in premiums. In another case an insurance expert stated that at the time of occupation no reliable insurance company would have accepted the risk, so that any money paid out in insurance would have availed him nothing. In these circumstances, no deduction should be made in respect of insurance and the claim should be allowed in full.

My recommendation is that the claimant be paid the sum of \$5,981.87 together with simple interest thereon at three per cent per annum from the first day of January 1946 for loss of 425 bags of coffee in Hong Kong while there awaiting transshipment to Vancouver when the Japanese Forces occupied the Port.

Dated this 21st day of October A.D. 1955.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

Deputy Commissioner Trainor has submitted to me his finding and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

It has, however, been brought to my attention that at some stage of the proceedings an error of computation arose in the conversion from pounds to dollars, and that, on the basis recommended by the learned Deputy Commissioner, the sum properly representing the loss is \$6030.23.

With that variation, I approve the report of the Deputy Commissioner and I accordingly recommend that the claimant be paid \$6,030.23 as an award for loss of coffee in Hong Kong, such payment to be in orders of Priority Nos. 3(a), 3(b), and 4, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 19th day of January, A.D.1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CLAIM No. 5325

Re: Rabinovitch

...c)—*Loss of effects:* From 1934 until June 1940, the claimant lived in the Hôtel Majory, 20, rue Monsieur le Prince, Paris VIe. In a letter dated March 8, 1948 and addressed to:

“Le Chef de Service,
Allocations Mobilières,
Le Délégué Départemental de la Seine,
45 Avenue George V,
Paris VIIIe”

the claimant said:

“At the end of the war, when I returned to my former apartment, I learned that my personal property had been looted by the Germans at the time of their search made in June 1940.”

In the hearing of April 6, 1955, the claimant stated that when he returned to his former apartment he had actually found none of the personal effects he had left in that apartment in June 1940.

The undersigned is satisfied that this is a property loss for which the Rules authorize compensation.

In an affidavit dated November 20, 1948 and sent to:

"The Department of the Secretary of State, War Claims Branch, Custodian's Office, Ottawa, Ontario."

the claimant submitted a detailed inventory of the property looted in June 1940.

The claim under this heading is for \$16,351.00. It must be noted that of this amount, a sum of \$15,000.00 is said to represent a loss of income of \$300.00 a month for fifty months, or a period of time extending from the claimant's arrest to his return to Canada. The Rules do not authorize an award to compensate for the loss of income suffered during detention. This part of the claim must therefore be rejected and it is rejected.

There remains a sum of \$1,351.00 said to represent the pecuniary loss suffered as a result of the looting referred to above and which is presumed to have taken place.

In view of the evidence offered of the reasonable market value of property lost at the time;

Considering the nature of personal effects lost,

Considering that some depreciation should be allowed,

The undersigned believes that the sum of \$1,000.00 would be a fair and reasonable award.

From the foregoing it is recommended that the claimant be paid the following awards:

- | | |
|---|-----------|
| (1) As a solatium | \$ 500.00 |
| (2) For pecuniary loss as a result of injury | 8,000.00 |
| This sum to bear simple interest at 3% per annum
from September 1, 1945. | |
| (3) For loss of effects | 1,000.00 |
| This sum to bear simple interest at 3% per annum
from January 1, 1946. | |

Ottawa, April 24, 1956.

(Sgd) FERNAND CHOQUETTE
Deputy War Claims Commissioner

NOTE: Awards approved by Chief Commissioner 8th June 1956, subject to W. C. Reg. 4(4), but interest on injury award to run from an estimated mesne date of 1st March 1947.

CASE No. 5329

Re: Andrew

The claimant seeks an award out of the War Claims Fund for (1) maltreatment alleged to have suffered at the hands of the Japanese while a civilian internee in their hands during World War II and (2) loss of personal property.

I find on the evidence adduced before me that the claimant was interned by Japanese authorities on January 8, 1942 and was released for passage on S.S. "Teia Maru" to Goa for exchange of prisoners about September 19, 1943, after 620 days of actual imprisonment, which, if he be eligible for an award, would entitle him to a maltreatment award of \$620.00. He also lost personal property both at Hong Kong and Shanghai, presumed by the Rules to have been looted, of an approximate depreciated value of \$1300.00 Canadian dollars.

Under the War Claims Rules, in order to be eligible for an award a claimant must have been Canadian both at the time of the loss and at the time

when the claim was presented for adjudication. Canadian at the time of presentation of the claim for adjudication means to be a Canadian citizen within the meaning of the *Canadian Citizenship Act*. And to be a Canadian at the time of loss, the claimant must be found to have been at such time (a) to have been a British subject who had a Canadian domicile within the meaning of the *Immigration Act*, or (b) to have been a British subject having a domicile in Canada.

Where the question of Canadian domicile arises in terms of the *Immigration Act*, such question is to be finally decided by the Department of Citizenship and Immigration. Where, however, the question is whether or not a British subject, at a relevant time, had a domicile in Canada, the question is one for adjudication by the Commission according to the principles of the common law.

In this case the Department of Citizenship has ruled that the claimant was not in possession of a Canadian domicile at the time of his internment. Therefore he must establish that he was a British subject having a domicile in Canada.

He was a British subject having been born of British parents at Lenchow, Kansuh, China, on April 2, 1912. In September 1928 he arrived in Canada, travelling on a British passport. On October 10, 1928, he entered the employ of the Bank of Montreal in Toronto and continued to be so employed until about November 1934 when he resigned to accept a position in China. Before leaving Canada he secured a Canadian passport issued to him on October 30th 1934. He could have travelled on a British passport which in 1934 would have been far more valuable in the Far East than was a Canadian passport. He went further and he had his Canadian passport renewed on October 11, 1939, making it valid until October 29, 1944. In that year he returned to Canada, but his Canadian status was not recognized by Immigration officials. Then, as he had accepted a Commission in the Special Forces of the British Army, he went to the United Kingdom and from there to India and China. He applied for and obtained a new Canadian passport, No. 384133, at Chungking, China, on June 25, 1945.

In a memorandum dated February 15, 1954, the Department of Citizenship and Immigration reports in part:

"We have an old file concerning this man, who relinquished Canadian domicile when he departed from Canada in 1934 for employment with a British firm in China."

No basis for the statement of relinquishment of Canadian domicile is set out in the memorandum, but to aver the relinquishment of something is to affirm its previous possession.

It would seem that less evidence is required to establish the abandonment of a domicile of choice than a domicile of origin. *Halsbury*, Second Edition, Vol. 6, at page 210 lays down:

"257. A domicile of choice continues until it is abandoned; it may be retained by residence alone, although an intention to abandon it has been formed, or by an intention to return, although the residence has been temporarily interrupted."

Whether the claimant abandoned his domicile of choice in 1934 depended on his intention at the time. And it seems difficult to imagine stronger corroborative evidence of the claimant's statement of intention to retain his Canadian status than his repeated acts in relation to his Canadian passport. Having studied the record and having heard the claimant's verbal evidence, I have no hesitation in finding that during the period of his internment he was a British subject having a domicile in Canada.

He still has one more hurdle to clear. He must be found to have been a Canadian citizen on the date of the presentation of his claim, i.e. on June 16, 1953. But having, on his return to Canada in 1942, lost his bout with the Department of Citizenship as to his Canadian status, he cannot, so long as that decision stands, be deemed to have been eligible to become a Canadian citizen before February 10, 1949, and not having applied for or been granted any certificate of Canadian Citizenship since that time, this Commission cannot recognize his claim under the War Claims Rules.

Dated this 24th day of October A. D. 1955.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

This claim presents a border-line case on the issue of national status, as based on the common law domicile of a British subject. Since, however, the learned Deputy Commissioner heard the oral evidence of the claimant, I am disposed to accept his finding that the claimant retained his common law domicile in Canada after leaving this country in 1934, and throughout the period of his loss and internment. At the time of the hearing before the Deputy Commissioner, the claimant had not received a formal grant of Canadian citizenship. Since then, the claimant has been granted a certificate of Canadian citizenship, dated 16 August 1956. As in other cases of a somewhat similar nature, I consider that this certificate, to which the claimant would apparently have been entitled at any date after 10 February 1949, would adequately confer on him Canadian status, within the meaning of the War Claims Rules, at the time of presentation of his claim, which would technically be fixed at 23 October 1952.

On the findings of the learned Deputy Commissioner, supplemented by the subsequent certificate of Canadian citizenship, I therefore find that the claimant was a Canadian national, as required by the War Claims Rules, both at the time of the acts causing the loss or damage complained of, and at the time of presentation of his claim. I similarly approve the findings of the learned Deputy Commissioner that the claimant was detained in internment camps controlled by the Japanese for 620 days, and that he lost personal property of the value of \$1,300.00 at Hong Kong and Shanghai as a result of operations of war.

I therefore recommend that the claimant be paid:

(a) \$620.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);

(b) \$1,300.00 as an award for loss of property in China, and Hong Kong, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1 January 1946 at 3% per annum.

The portion of the claim relating to the repatriation expenses of the claimant must be disallowed.

Dated this 11th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5330

Re: Birks-Crawford Limited

The claimant appeared before me at Vancouver, B.C., on May 28, 1955, by its solicitor, G. S. Hugh-Jones, Esq., to present its claim for compensation out of the War Claims Fund for loss of two shipments of canned tuna fish comprising 3700 and 2500 cases respectively. The loss thereof is alleged to have been caused by enemy action when the goods were held in warehouses in Hong Kong or aboard ship in the Harbour of Hong Kong in transit for Vancouver, B.C. The claim is made for \$30,209.23, being the purchase price payable by the claimant to the shippers, Borneo Fishing Company Limited, Sandakan, North Borneo, together with simple interest thereon at the rate of 3% per annum from 1st January 1946.

National Status:

The claimant was incorporated under the laws of the Province of British Columbia on March 23, 1922, under the name of Birks-Crawford and Lindsay Limited, subsequently changed on June 9, 1927, to Birks-Crawford Limited. The certificate issued by the Registrar of Companies, British Columbia, under date September 8, 1953, filed, verifies the foregoing and shows that the Company remained so incorporated and on the Register of Companies as at December 7, 1941, as well as April 28, 1952, and was so incorporated and in good standing to the date of the said certificate.

A certificate of the Assessments Branch, Department of National Revenue, marked Exhibit 2 on the hearing, shows that the Company has remained in business continuously in Canada since December 1941.

I am satisfied that the claimant at all relevant times was resident in Canada, and was engaged in active trading activities in Canada within the meaning of those terms of War Claims regulation 1(b).

Proof of Claim:

Two directors of the Company appeared before me on the hearing, but were not called as witnesses, since the claim is verified by Statutory Declarations enumerated below and documentary material mentioned, the same being as follows:

- (1) Statutory Declaration of Charles V. Sands, a present director of the Company, who was its Office Manager and Accountant in 1941, to which is Exhibited Invoices, and Bank and shipping documents relative to the said goods;
- (2) Statutory Declaration of William C. Bennett, a present director of the Company, who in 1949 personally made an investigation in Hong Kong with a view to determining the fate of the goods the subject of the claim;
- (3) Statutory Declaration of Edgar T. McBride, Foreign Exchange Manager of the Company's bankers, the Bank of Toronto, at Vancouver, B.C., to which is exhibited all available bank records relating to the purchase of the said goods by the Company and payment by it of the purchase price;
- (4) Statutory Declaration of George G. Barnes, representative of the Company's insurance agents, who deposes to insurance coverage carried by the Company on the said goods; and
- (5) Statutory Declaration of Graeme S. Hugh-Jones, solicitor for the Company, to which is exhibited a file of correspondence relative to the said goods.

Outline of Evidence Adduced in Support of the Claim:

I do not think it will serve any useful purpose to recite in detail the evidence which has been adduced in support of the claim, all of which has been most helpfully tabulated and is indexed in a memorandum headed "Notes on Claim as Filed" which is attached to the record of proceedings held May 28, 1955.

It is sufficient to say that the evidence discloses the following:

In January, 1941, the Company contracted to buy from Borneo Fishing Company Limited, Sandakan, North Borneo, 16000 cases of tuna fish for later shipment to Vancouver. On the same date the Company established with the Bank of Toronto, Vancouver, B.C., a bank credit in the sum of \$68,800.00 (see Exhibit 4A—E.T.M. 1) and subsequently on the 16th September 1941 a second letter of credit in the sum of \$28,200.00 (Exhibit 4A—E.T.M. 19 and 20) against which credits it was anticipated that the Borneo Company would draw as shipments were made.

On September 20, 1941 and October 16, 1941, the Borneo Company shipped to the claimant 3700 and 2500 cases respectively aboard S.S. "*Hin Sang*", a vessel operated by Jardine Matheson and Company Ltd., which shipments were invoiced to the claimants at \$17,049.32 and \$13,009.62 respectively (See Exhibit 3A). Five original invoices signed by the Borneo Company are dated Sandakan, 20 September 1941, and three similarly executed bear date 16th October 1941. All such invoices are original documents with one exception, the latter having been lost. It is noted that the original purchase contract has been lost (see Transcript p. 5). However, the supporting documents which are available and have been filed in my opinion sufficiently establish the fact of such purchase and sale.

Payment for Goods:

On December 4, 1941, the Company's bankers received drafts from the Borneo Company covering the invoice price of the said goods, which documents were duly accepted by the Bank. In due course the Bank charged to the account of the claimant against the credits so established the aggregate of the drafts so accepted plus banking charges, i.e., the sum of \$30,209.23 (see Exhibit 3).

Owing to the outbreak of hostilities in the Far East, the said sum was not remitted to the Borneo Company's Bankers, but, on instructions given to the claimant's Bankers by the Custodian of Enemy Property (Canada) the same was paid to the Custodian and receipt for such payment was duly acknowledged (see McBride Declaration Exhibit 4).

Shipment of Goods:

The fact of shipment of the goods, the subject of the claim is, I think, sufficiently established on the material referred to in the transcript of evidence, pp. 11(b), 12(a), 12(c), 13(a), and Exhibit 6, W.C.B. 5, all of which relate to the first shipment of 3700 cases, and Pages 13 (b), Exhibit 7, Pages 14 and 15 (a); particular reference is made to a letter received by the claimant from Jardine Matheson and Co. Ltd. dated Hong Kong, January 5, 1954, part of Exhibit 6, wherein Jardine Matheson and Co. Ltd. state:

"that on 28th September, 1941 a total of 3,700 cases marked "B.C.L. (Birks Crawford Ltd.) Vancouver" were discharged from the No. 3 hatch of m.v. "*Hin Sang*" to Kowloon Godown Co's lighter No. 86 between...From a record of the cable sent to us by Sandakan Agents relating to the despatch of this vessel we are able to state with accuracy that this was the only

consignment of fish destined for Vancouver aboard "*Hin Sang*" on that particular voyage. Unfortunately, we can find no copy of the manifest or Bill of Lading so that we do not know to whom the cargo was consigned at Hong Kong...

...As to the 4th voyage of "*Hin Sang*" (ex Sandakan about 20/10/41) our only record consists of a despatch cable which indicates merely that her cargo for Hong Kong included a consignment of 2,192 cubic ft. of fish destined for Vancouver. As the average measurement of each case is in the vicinity of 1 cubic ft., this would certainly appear to be the balance of the 6,000 cases to which your investigation refers. We have no documents however to show how this cargo was disposed of after discharge from the "*Hin Sang*", nor are we able to say for certain that it bore the same marks."

Reference is also made to Exhibit 4 A, E.T.M. 29 to 33 and to the Declaration of William C. Bennett and the correspondence exhibited thereto wherein is outlined particulars of investigations made by the declarant to determine the fate of the goods.

It appears from the material mentioned by Counsel at Page 15 (b) of the transcript that efforts were made by the claimants without success to arrange for trans-shipment of the said goods from Hong Kong to Vancouver, the difficulty in so doing arising from the fact that all available shipping space Hong Kong to North America was commandeered by the U.S. Government at the time when the said goods arrived in Hong Kong. A further letter from Jardine Matheson and Co. to the claimant's solicitors under date June 29, 1953 (see Exhibit 5A which relates to the second shipment of 2500 cases tuna fish) shows:

"in the matter of *Hin Sang's* discharge here in 1941. Although we have no records we can safely say from memory that the vessel at the time of the outbreak of the Japanese War had completed her discharge and was being held in ballast pending the requirements of the Royal Navy Dockyard. As far as we can ascertain she arrived in the Colony on the 22nd November and it is safe to assume that the discharge of her cargo was completed well in advance of December 8th when hostilities commenced."

In my opinion it is reasonable to conclude from the foregoing, notwithstanding the loss of shipping documents which would provide conclusive proof, that all the said 6200 cases of tuna fish were in fact delivered to warehouses in Hong Kong and that the same were not trans-shipped to North America for want of shipping space.

Some confirmation of the fact that the goods were believed by the claimant to have been delivered in Hong Kong is afforded by the fact that the claimant insured the same against War Risk and Frustration Expense (see Transcript pp. 15, 16, 17(a), 17(b), 18(a) and Declaration of George G. Barnes, Exhibit 8). No recovery was made on the War Risk Insurance since the recovery was limited to a period of fifteen days for transference and the limit was exceeded. Nor was any recovery made in respect to Frustration Expense as the Company's claim in respect thereof was rejected by the insurers (see Transcript, p. 16). It appears from Mr. Sands' Declaration that the Company did not sell, assign, pledge or transfer their interest in the said goods and that the same were not received by it.

A letter from the Canadian Trade Commissioner, Hong Kong, to the claimants under date December 23, 1953 concludes with the following statement:

"Perhaps the best that can be obtained for you is a general statement from the local Government to the effect that the vessel in question was known to have arrived in Hong Kong immediately prior to the outbreak of war and

(assuming that no documentary records of her unloading exist) her cargo can be presumed to have been lost in Hong Kong as a result of the hostility, especially in view of the fact that Japanese expropriated all cargoes in the Colony and foods in particular."

I am satisfied on the evidence which has been adduced before me that the only reasonable conclusion to be drawn in the circumstances is that the said goods were lost due to enemy action.

Since it has been shown that the cost to the claimants of the said goods was \$30,209.23, I would assess the market value thereof at the date of loss at that sum.

I therefore recommend payment to the claimants of the sum of \$30,209.23 together with simple interest thereon on the rate of 3% per annum from 1st January 1946.

(Sgd) H. I. BIRD

Deputy War Claims Commissioner

NOTE—Award approved by Chief Commissioner subject to prevailing orders of priority 4th November 1955.

CASE No. 5332

Re: O'Brien

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further argument in support of the contention that the Deputy Commissioner's recommendation should be reversed and an award recommended. The claimant particularly submits that his case should be an exception from the portion of the War Claims Rules which provides that losses of personal belongings by members of the Canadian armed forces should not be compensable out of the War Claims Fund. To quote from the claimant's present submission:

"If I had been on draft or on posting from one station to another, I fully realize as a member of the armed forces, that I would have no claim and I would not have submitted one. On the other hand, I base my argument on the fact that I was returning from Annual Leave and paying my own way, and therefore I am entitled to compensation for my losses."

The relevant provision of the War Claims Rules is set out at page 58 of the Report of the Advisory Commissioner:

"One class of exceptions to the losses enumerated above as compensable should, however, be established. These losses as enumerated would include certain losses of personal belongings by members of the Canadian armed forces lost, stolen or looted. I am informed that the understanding has always been that members of the armed forces, if they took with them personal belongings on service, did so entirely at their own risk and in my opinion losses of such belongings should not be compensable out of the War Claims Fund."

The Advisory Commissioner's comments are perhaps too concisely expressed to give a complete picture of the situation. As a matter of fact, the several branches of the armed forces had somewhat elaborate regulations providing for compensation, within certain limits, to members of the respective services for loss of personal belongings. Members of the respective services were expected to familiarize themselves with those regulations, and with the

limits of compensation thereby provided, as well as with the fact that they should insure their personal belongings against war risks which were beyond the limits of compensation provided by the regulations. They were also, upon discharge, given a specific opportunity of making a claim for loss of personal effects.

In the light of this situation, it is necessary to interpret the comments of the learned Advisory Commissioner by assigning to the last sentence the following meaning:

"I am informed that the understanding has always been that members of the armed forces, if they took with them personal belongings on service, did so entirely at their own risk except insofar as any loss might be compensable by the service regulations of their respective branches of the armed forces, and in my opinion losses of such belongings should not be compensable out of the War Claims Fund."

There is, of course, a logical distinction between the situation of the claimant who was returning from leave at his own expense, and a member of the services who might be travelling on a similar journey on draft, or on posting from one station to another. My understanding of the regulations which I have mentioned is that (except in special circumstances) a serviceman travelling on leave was not entitled to the compensation provided by the service regulations for loss of personal effects. This is perhaps the reason why the claimant did not claim, or if he did claim did not receive, compensation under the service regulations.

From the equitable point of view, however, the claimant's contention works rather against him than in his favour, because its acceptance would oblige the Commission to compensate a serviceman travelling for his own pleasure on leave for a loss which would not be compensable if he had been travelling on draft or on immediate active service.

On a very careful consideration of the whole situation, I am of opinion that the Commission has no authority to make the requested exception from the provision of the War Claims Rules which prescribes that losses of personal belongings of members of the armed forces are not compensable out of the War Claims Fund.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that this claim be disallowed.

Dated this 16th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5333

Re: Sunset Manufacturing Co. Ltd.

This claimant is a corporation by letters patent under the laws of Manitoba with headquarters in the City of Winnipeg and seeks an award of compensation for the loss at Hong Kong of a shipment of goods from Calcutta.

I find from the evidence that the claimant corporation was Canadian in residence and trading activities at the time of the presentation of the claim and at the time of the loss complained of.

The evidence discloses that the claimant was engaged in the manufacture of cotton and jute flour and feed bags. The materials for the manufacture of

bags had to be imported and prior to World War II purchases were made in Calcutta, India, and the goods were shipped via Hong Kong to Vancouver by water, and by rail from Vancouver to Winnipeg.

The evidence further discloses that the claimant, through its brokers, Shaw, Wallace and Company, Calcutta, purchased 450 bales of Hessian cloth and that the goods were shipped to Hong Kong by the ships "*Yuensang*", "*Kutsang*" and "*Kumsang*" on August 16th, 22nd, and 24th 1941 respectively, and on arrival at Hong Kong were to have been transhipped to Vancouver. There is no absolute proof that all of the goods did in fact arrive at Hong Kong but the Indo-China Steam Navigation Company Limited at Hong Kong states that to the best of their knowledge the ships arrived and discharged their cargoes into the Godowns of Hong Kong and Kowloon Wharf and Godown Company Limited. The records of both of those companies concerning the transactions were lost or destroyed during the Japanese occupation of Hong Kong which was surrendered to them on December 25, 1941. However, after the re-capture of Hong Kong 52 bales of the shipments were located and were disposed of as hereinafter set forth. This establishes that some of the goods did arrive and were unloaded and on the basis of the rule as to the balance of probabilities I find that the goods claimed did arrive in Hong Kong and were unloaded there and the disappearance of such as were not recovered must be accounted for by looting as provided for in the rules, since Hong Kong was in fact occupied by an enemy. See page 24 of the Report of the Advisory Commission.

The claimant seems to have made every effort possible to have the goods transhipped from Hong Kong but without avail. Also when the situation was growing more serious in the Far East instructions were given without avail to have the goods returned to Calcutta.

It was suggested in another case that the failure to have the goods transhipped resulted from the taking of shipping space for other purposes by executive orders and, therefore, the loss was not compensable by virtue of the ruling on the 24th classification of losses as set out at page 68 of the said report of the Advisory Commission. In my opinion, the loss in this case does not come within that classification. The only effect that an executive order could have had in this case would have been to delay the delivery to the claimant and the goods would still have been intact at Hong Kong. The claim here is based on the claimant's complete deprivation of the goods which is amply demonstrated by the fact that credit has been given for the goods which subsequently turned up.

The evidence discloses that when the goods were purchased in Calcutta they were insured by an open policy issued by The Insurance Company of North America—policy No. 3001. This policy covered the goods while in actual transit during a 15 day period of waiting for transshipment at Hong Kong and would have been immediately reinstated when transhipped. No payment was made under this policy because the 15 day transshipment period had expired.

Mr. Francis Horne, a director in charge Marine Insurance, in the firm of Allan, Killam and McKay, through whom the claimant placed its insurance on the property lost, gave evidence before me on behalf of the claimant. He stated that, while under normal conditions insurance could have been arranged for further 15 day periods while goods were awaiting transshipment, there was no insurance that was available to the claimant at that time.

In my opinion, the claimant has suffered compensable loss, and no insurance being procurable, no deduction in any award of compensation should be made because of insurance which the claimant would otherwise have been able to procure.

The goods in question were ordered through Shaw, Wallace and Company in February of 1941 and were shipped in August as above mentioned to Hong Kong for transshipment to Vancouver with freight prepaid. Payment was arranged by letter of credit through the Bank of Toronto and the certificates of the Bank of Toronto show that the total cost to the claimant amounted to \$67,460.99.

After the recapture of Hong Kong 52 bales of Hessian cloth were found in a godown and were found to be a portion of the claimant's lost goods. Not being able to inspect them as to condition to ascertain of their fitness for transportation to Canada, the claimant had them sold in Hong Kong and the net proceeds of \$8195.08, being \$488.48 in excess of their original cost on the basis of 52/450 of \$67,460.99, were deducted from the amount of the claim. Subsequently, the claimant obtained from The American Mail Line the sum of \$3,463.82 being a refund plus premium for prepaid freight from Hong Kong to Vancouver. The total of the two items of compensation amount to \$11,658.90 and leave the claimant's net loss at \$55,802.09.

My recommendation is that the claimant be paid the sum of \$55,802.09 together with simple interest thereon at the rate of three per cent per annum from the first day of January A.D. 1946 as compensation for loss of goods at Hong Kong while awaiting transshipment to Vancouver.

Dated this 8th day of June A.D. 1955.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

NOTE:—Award approved by Chief Commissioner (subject to prevailing orders of priority), 4th November 1955.

CASE No. 5545

Re: Hammell

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant's principal submission is that he was forced to labour in spite of his non-commissioned rank. This is a technical breach of the recognized conventions, and if working conditions were satisfactory, I do not think it would in itself entitle a claimant to a special award. Most claimants would, in fact, prefer to work under reasonable conditions, rather than to pass the time in enforced idleness. The only work party of which the claimant gives evidence is a two months' assignment to a salt mine. Working conditions in the salt mines were notoriously bad, and the Deputy Commissioner has fully considered this incident and made a special award on its account.

This claimant was not subjected to the usual aggravating incidents of maltreatment, such as shackling, box-car transportation, Gestapo custody, or 1945 "hunger march".

He spent 18 months of his internment in hospital, but there is no evidence that hospital conditions were not as reasonably satisfactory as conditions would permit.

On a very careful review of this claim I do not find any evidence which would justify an increased award.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that the claimant be paid \$243.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 5th day of November A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5697

Re: de Vries

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

Since the learned Deputy Commissioner's report, Probate of the Last Will and Testament of William Pieter de Vries was granted to his widow Maria Anna de Vries, the sole Executrix named in his will, such probate being granted by the Supreme Court of British Columbia on 4th December 1957. The Executrix has also executed and filed with the Commission an Assignment to the Crown of her entitlement to any alternative compensation which she may receive from a source other than the War Claims Fund.

The learned Deputy Commissioner's recommendation proceeds on the basis that the existence of outstanding mortgages should not prevent the claimant from receiving compensation in the full amount of the established war loss, namely \$54,672.57. It appears to me, however, that if the claimant is never obliged to pay the outstanding mortgages, she will obviously be making a profit out of the award which is now recommended for her. In the absence of evidence that the claimant has paid, or will be obliged to pay, the outstanding mortgages, I am therefore of the opinion that those mortgages must be taken into consideration in arriving at the compensable loss for which the claimant should receive an award from the War Claims Fund. It is probably, however, equitable to conclude that the proper amount of deduction on account of the mortgages should not be the gross sum due on them, but the sum due on the mortgages less the value of the security in East Germany which remains available for application against the amounts due. It would appear equitable to compute the total amount due on the mortgages at RM 95,000 and the total of the available security remnant at RM 64,400, leaving a deficiency obligation of RM 30,600 or \$12,311.70. I consider that this latter amount should be deducted from the award recommended by the learned Deputy Commissioner in order to arrive at the equitable balance of net loss for which the claimant is entitled to compensation, which thereupon becomes \$42,360.87. In order to avoid the delay which would be incident to the giving of notice of reduction of award pursuant to Rule of Procedure No. 20, I would now recommend an interim award of the last mentioned amount, subject to further review if the claimant wishes to submit additional materials or arguments in opposition to the deduction which I have made on account of the outstanding mortgage obligations.

With the foregoing reservations and variations, I approve the recommendation of the Deputy Commissioner, and I accordingly recommend that the claimant Maria Anna de Vries, as Executrix of the Estate of William Pieter de

Vries, be paid \$42,360.87 as an award for loss of property in East Germany, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b), 5, and 6, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 15th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

By my Report dated 15th April 1958 I recommended payment to the claimant of \$42,360.87 and interest as an award for loss of property in East Germany.

In the absence of a notice of reduction of the Deputy Commissioner's award pursuant to Rule of Procedure No. 20, I further recommended that the award be subject to further review if the claimant wished to submit additional materials or arguments in opposition to the deduction which I made on account of the outstanding mortgage obligations.

The claimant has since submitted materials and arguments in support of the following contentions:

(a) That my recommendation did not make sufficient allowance for the outstanding value of the mortgaged assets which remained available towards the satisfaction of the mortgages; (b) That provision should be made for reimbursement of the claimant in case she is at some future time obliged to pay the mortgages or some portion of them.

In support of contention (a), as it is apparently impossible to obtain specific information regarding present-day values in Dresden, the claimant submits estimates of the values on building lots in Regensburg and on the outskirts of Munich. After very careful consideration of the case, in the light of the additional materials, I am unable to form the opinion that the claimant is entitled to any further award on this ground. I still consider that both the actual damage to the properties, and the impact of the owner's mortgage liability at the time of the loss, have been equitably assessed.

As to contention (b), I consider that the possibility of the claimant's having to pay the East German mortgages or any part of them is now so remote that it would not warrant the retention of a specific amount in the War Claims Fund to compensate the claimant if such a contingency should arise.

There remains one item which was not dealt with in my Interim Report, or in the Report of the learned Deputy Commissioner.

The War Claims Rules provide that claimants may be allowed reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling them to establish their claims. In the present case, a large volume of documents was presented in evidence before the Commission. It is evident, however, that all these documents were not specifically obtained for the purpose of presenting this claim, but that many of them were required in connection with the ownership and management of the claimant's property. I would estimate at \$200.00 the expense incurred abroad in the obtaining of evidence specifically necessary for presentation of the claim to this Commission, and I would recommend reimbursement in that amount.

For the foregoing reasons I recommend that payment of the award recommended in my Report dated 15th April 1958 be regarded as final compensation for loss of property in East Germany, but that the claimant, Mrs. Marie Anna de Vries, as Executrix of the Estate of William Pieter de Vries deceased, be paid \$200.00 as an award for expenses necessarily incurred for services per-

formed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest and not to be taken into account for Priority purposes.

Dated this 24th day of February, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5798

Re: Bowden

Deputy Commissioner C. W. A. Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

There is, however, evidence that this claimant was transported across the Baltic to Stettin in the hold of an ore boat under overcrowded, hot, and unsanitary conditions.

He was subsequently compelled to participate in the infamous "running march" in the course of which the prisoners were shackled in pairs and forced on by threats of bayonets, rifle butts, and dogs. They were forced to discard practically all their personal belongings.

I would recommend a nominal additional award of \$40.00.

With this variation, I approve the report of the Deputy Commissioner, and recommend that the claimant be paid \$286.40 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 20th day of September, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5799

Re: Morris

Deputy Commissioner C. St. Clair Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review. The deceased serviceman and the claimants are deemed to have been Canadians at all relevant times. But since the report of the learned Deputy Commissioner, evidence has been received to the effect that the deceased serviceman's father is still living, and I have no reason to believe that he is not equally "dependent" with his wife. They should therefore divide the award in equal shares.

With this variation, I approve the report of the Deputy Commissioner and I recommend that the claimants be paid \$436.00 in equal shares as an award for maltreatment of their son the late Private George James Eberwein Morris, whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

As Mrs. Morris alone prosecuted this claim, payment should be by joint cheque.

Dated this 17th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6022

Re: Duncan

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant, Marion L. Duncan as administratrix of both estates, has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, except as to the amount of the deduction on account of ex gratia payment by the Government of the United Kingdom. The gross amount of this payment was £150. This was reduced in the first place by deduction of £25.10.0 costs paid to English solicitors, and afterwards by \$112.50 costs paid to Canadian solicitors. For reasons mentioned in previous reports, I have in a few instances allowed expenses incurred by the employment of English solicitors in connection with the administration of estates of deceased claimants. Allowance of the two bills of costs, however, would appear to be out of proportion to the expenses directly and necessarily referable to the securing of the United Kingdom award. After due notification to the claimant in pursuance of Rule of Procedure No. 20, I am therefore obliged to disallow the deduction, from the United Kingdom award, of the costs paid to Canadian solicitors. This leaves the net chargeable amount of the United Kingdom award at \$502.98.

The beneficiaries of each of the claimant estates appear to be Canadian citizens.

With the foregoing variation, I approve the report of the Deputy Commissioner and recommend

- (a) That the claimant Marion L. Duncan, as administratrix of the estate of Ina May Duncan, be paid \$1200 as an award for loss of personal property by the said Ina May Duncan at the sinking of the S.S. *Athenia*, such payment to be in order of Priority No. 3 (a) and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$502.98 received from the Government of the United Kingdom with interest adjustment from 16th March 1949;
- (b) That the claimant Marion L. Duncan, as administratrix of the estate of Julia M. Duncan, be paid \$275 as an award for loss sustained by the said Julia M. Duncan by reason of the death of Ina May Duncan at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. (1-2), and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 25th day of February, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6029

Re: Stockwell

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that her award should be increased.

As to the claim for maltreatment, there was apparently a misunderstanding between the claimant and the Deputy Commissioner. From a letter stating

that she had made no claim in respect of personal injury and had not returned Form D to the Commission, the learned Deputy Commissioner inferred that the claimant intended to abandon her claim for maltreatment. My interpretation of the letter would be rather to the effect that the claimant had misunderstood the technical distinction between maltreatment and personal injury claims, the former being intended as a personal solatium for sufferings inflicted by wrongful conduct or wilful neglect on the part of enemy captors, and the latter being intended to compensate for pecuniary loss caused by personal injury, whether resulting from maltreatment or otherwise.

As a matter of fact, the claimant completed Form F in great detail, and it was apparently intended both for a maltreatment and for a personal injury claim in the sense intended by the War Claims Rules. There is a great deal of evidence on file to indicate that, following her experience at the sinking of the "*Zam Zam*", the claimant was subjected to further distressing, and often degrading, experiences in the course of her voyages on a prison ship, on a prison train, and in several successive jails. Those experiences lasted for approximately 156 days. I would infer from the nature of those experiences, and from the certificate of a medical practitioner that they resulted in a highly nervous condition, which prevented her from undertaking any type of occupation for about eight months after her return to Canada. For loss of earnings during that eight months period, the claimant claims \$800.00. It is not, however, apparent that the claimant would have earned anything in that period had it not been for the disaster, as she was travelling to Africa for the purpose of marriage. The balance of the \$5,000.00 claimed for maltreatment would apparently be compensation for sufferings and general damages incurred by the claimant as a result of the sinking of the "*Zam Zam*" and her subsequent internment. That portion of the claim would not be allowable.

It is not customary to allow a claim for personal injury without having the oral evidence by a medical practitioner. Such evidence was apparently dispensed with in this case by reason of the Deputy Commissioner's understanding that the maltreatment claim (which really included a personal injury claim) had been abandoned.

There is, however, the additional circumstance of this case that the claimant was travelling to South Africa for the purpose of being married, and that she was actually married within a year after her liberation. The causal connection between her maltreatment and subsequent loss of earnings is therefore not established with any certainty. I am, however, prepared to accept Dr. Roy H. Thomas' certificate to the effect that the claimant was in a highly nervous condition and incapable of working for some months immediately following her liberation, and the natural inference is that such incapacity was a direct result of the improper experiences to which she was subjected during custody. I would therefore recommend, as a nominal solatium for the maltreatment endured, a lump sum award of \$150.00.

As to the claim for loss of property, the claimant misunderstands the learned Deputy Commissioner as having said that the market value of lost goods means the amount for which the goods could be sold at the time and place of the loss. The reasonable market value must be assessed as of 30th June 1939, and therefore cannot take into account any appreciation due to wartime scarcity and other prevailing conditions. The claimant also indicates that a great many of her possessions were practically new, and some of them unused. The experience of the Commission is, however, that all consumer goods, however new, are subject to some measure of depreciation in order to arrive at their actual market value.

The claimant further complains that the learned Deputy Commissioner should not have based his valuations on the amount of insurance which she had

placed on her possessions prior to embarkation. The insurance carried was \$1,600.00 covering ordinary marine risks, and \$1,000.00 covering war risks. The claimant now gives an apparently truthful, and reasonably convincing, explanation why the amounts of insurance were so limited. Since the learned Deputy Commissioner apparently arrived at his valuations in part, at least, by taking the amount of insurance as a starting point, I feel disposed to make an exception from my usual hesitation in disturbing a finding of fact on the basis of an oral hearing. The listing and valuation of the lost goods have been prepared with meticulous care and accuracy by the claimant, and on the basis of her explanation for the limited amount of insurance carried, I incline to the view that the assessed market value of the goods which she lost should be increased to \$2,550.00. This, added to the loss of passage money and cash, would make a total property loss of \$3,000.00, from which the proceeds of the War Risk Insurance policy must be deducted.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I therefore recommend that the claimant be paid:

- (a) \$150.00 as an award for maltreatment of herself whilst a civilian internee in Europe, such payment to be in order of Priority No. (1-2);
- (b) \$2,000.00 as an award for loss of property at the sinking of the SS "Zam Zam", such payment to be in order of Priority No. 3(a), together with simple interest on \$3,000.00 from 17th April 1941, subject to adjustment of interest on \$1,000.00 (insurance money) from 17th November, 1941.

I recommend that the claim for personal injury be disallowed.

As to the Deputy Commissioner's note that the claimant is indebted to the Canadian Government in the sum of \$91.11, this Commission has no jurisdiction to adjudicate upon such an account, but it should be made a subject of direct negotiations between the claimant and the Government.

Dated this 17th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6030

Re: Watts

This claim was reported by me on the 27th September 1954 in which I disallowed applicant's claim for \$500.00 alleged to have been deposited in the Hong Kong and Shanghai Bank but reserved the right to reopen the claim if satisfactory evidence was adduced to establish the claim.

The Chief Commissioner fixed the date for production of such evidence at 27th September 1955.

The material since produced is to the effect that such money as applicant deposited in said bank is still there, but the bank is unable to pay it owing to certain orders of the Chinese government. This is not an act of war but would appear to be in the nature of confiscation by said government since the end of the war. The claim is therefore not one falling within the rules of the Commission but expressly excluded therefrom, and consequently must be disallowed.

Dated this 28th day of September, 1955.

(Sgd) J. D. HYNDMAN
Deputy War Claims Commissioner

NOTE:—Disallowance confirmed by Chief Commissioner, 1st November 1955.

CASE No. 6037

Re: Bégin

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and I take it that he joins with his fellow-Jesuits from Canada in submitting arguments in support of the contention that his award for personal injury should be substantially increased and should include travelling expenses.

I have carefully reviewed this claim in the light of the evidence adduced, and I agree with the conclusion of the learned Deputy Commissioner that the evidence does not sufficiently establish that the claimant's subsequent illnesses and partial disability were effectively caused by maltreatment during his internment.

On the other hand, from the evidence submitted in this case and in numerous other cases of internment at Los Banos Camp, I am convinced that actual maltreatment prevailed there in the administration of the Camp. I am also of the opinion that the subsequent ailments suffered by the claimant, and the consequent alleged loss to himself and his Order, were not entirely due to maltreatment suffered at Los Banos. It was not until 23rd December 1953 (after this Commission had been appointed to adjudicate claims) that Dr. Dazé made a note on a medical document dated 1945, expressing his belief as to the connection between internment conditions and the claimant's subsequent physical disability. Dr. Dazé, in commenting on the note referred to, states that the examinations of the claimant after his repatriation revealed a normal condition: there were signs of depression, but no indication of specific ailment.

Even if we accept Dr. Dazé's opinion at its full face value, it is not sufficient, in order to establish personal injury claim, that the ailment complained of was causally connected with previous internment. The stress and anxiety of residents in theatres of war and in enemy-occupied territories, and particularly in internment camps, were the cause of a great deal of illness apart altogether from the existence of any measure of maltreatment.

Nevertheless, though the evidence does not establish that maltreatment was the sole, or even the principal, cause of the claimant's illnesses, I think it can be properly inferred that the maltreatment to which he was subjected at Los Banos, including particularly malnutrition and unsanitary conditions, contributed to, or aggravated, his subsequent ailment to some extent, with some resulting aggravation of pecuniary loss to himself or his Order.

In the case of a religious Order, whose members are bound by vows of poverty, it is extremely difficult to assess the quantum of pecuniary damage, and in the present case it is impossible to assess with any degree of mathematical accuracy the proportion in which such loss was aggravated by previous maltreatment. The adjudicating tribunal is therefore bound to place itself entirely in the position of a jury; in that capacity, I would estimate the extent to which the pecuniary loss was aggravated by maltreatment at \$3,000. I would therefore recommend payment of that amount, together with medical and hospital expenses incurred by the claimant immediately after repatriation. Those expenses would appear to have totalled \$106.12, rather than the \$71.12 recommended by the learned Deputy Commissioner.

For purposes of convenience, payment will be recommended directly to the claimant, leaving it to himself and his Order to determine the ultimate beneficiary of the award.

I agree with the conclusion of the learned Deputy Commissioner that entitlement to compensation for travelling expenses has not been established.

Transportation from Montreal, Beyrouth and Peking must obviously be disallowed, as those journeys were completed without interruption. I understand, however, that the claimant was in course of a journey from Peking to India, which was interrupted by enemy bombing of his ship at the Philippines. If, therefore, the cost of transportation for that portion of the journey had been prepaid, its interruption by an act of war might give rise to a compensable claim. The claim may therefore remain open for submission of further evidence on that point.

Subject to the foregoing reservation, I approve the report of the Deputy Commissioner with the variations above noted.

I therefore recommend that the claimant be paid:

- (1) \$233.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);
- (2) \$3,106.12 as an award for personal injury resulting from the above mentioned maltreatment, such payment to be in order of Priority No. (1-2), and to bear simple interest from 1st January 1948 at 3% per annum;
- (3) \$300.00 as an award for loss of property in the Philippines (the claimant presumably not having been eligible to file a claim against the Philippine War Damage Commission), such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 14th day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6078

Re: Renaud

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and his Counsel has submitted an elaborate series of arguments in support of the contention that the Deputy Commissioner's recommendation should be reversed, and awards recommended for maltreatment and personal injury.

I have very carefully considered the transcript of the evidence and other materials furnished to the Commission in connection with this claim, and others of the same group, and I am convinced that they fully support the findings and conclusions of the learned Deputy Commissioner. His report is so clearly reasoned and comprehensive that there is very little that I can add to it, except to state that it should be incorporated in, and read as a part of, this recommendation.

In view, however, of the extensive submissions presented by the claimant's counsel (both properly to the Commission, and improperly through members of Parliament and other indirect channels), I consider it desirable to refer briefly to the principal arguments advanced in those submissions. The submissions may be roughly classified into three groups:

- (A) Preliminary objections to the general proceedings of the Commission, and contention that a general code of Rules should have been established, that special Rules should have been adopted for the benefit of

charitable organizations, and that the Chief Commissioner should have recommended amendments to the existing Rules;

- (B) The contention that the claimant's place of detention at Zikawei was a camp administered or effectively controlled by the Japanese;
- (C) The contention that the living conditions at Zikawei, and particularly the inadequacy of food supply, constituted maltreatment within the meaning of the War Claims Rules.

(A) (1) The claimant's Counsel stresses the recommendation of the Right Honourable Advisory Commissioner that "before the setting up of a tribunal or tribunals there should be established a code defining the war claims that are admissible and settling the basis upon which the compensation is to be determined." The learned Advisory Commissioner was apparently too modest to anticipate that his Report of 25th February 1952 would be accepted practically *in toto* by the Government of Canada and thereupon be constituted (with a very few relatively minor exceptions) as the War Claims Rules.

It is obvious that the establishment of a "code" to which the learned Advisory Commissioner refers has been fully consummated in the form of his own Report with modifications to the extent specified in the Schedule to the War Claims Regulations. I am of the opinion that no more detailed or specific 'a priori' code could properly have been adopted in the circumstances.

(2) The claimant's counsel also stresses repeatedly the alleged duty cast on the adjudicating tribunal to recommend special rules relating to charitable associations, as recommended by Item 31 on p. 70 of the Report of the Advisory Commission. An examination of that item makes it appear clearly that the special rules there contemplated would be extremely narrow in their application, and could have no possible reference to the present case or to any of the cases with respect to which the point is urged by Counsel.

The "special rules" contemplated by Item 31 would be intended solely to prevent unincorporated charitable organizations from being prejudiced by the technical absence of corporate capacity. The learned Advisory Commissioner merely suggests that there may be unincorporated charitable associations as to which such special rules should be made. He states, however, that he knows of no claims by such associations, and no such claims have come to the notice of the Commission. If, and when, any claims by unincorporated charitable associations come to the notice of the Commission, appropriate rules will be recommended to bring such associations to a parity of eligibility with similar organizations which are fully incorporated. It would, I think, be entirely inequitable to recommend that the compensation awarded to charitable organizations and their members should be based on principles different from those applicable to claims by other individuals and corporations.

(3) The claimant's Counsel stresses the authority conferred on the Chief Commissioner on p. 94 of the Advisory Commission's Report to recommend amendments to the War Claims code from time to time in the light of the experience gained by himself and the Deputy Commissioners. So far as maltreatment claims arising in the Far East are concerned, any amendment which I might be disposed to recommend would have the effect of casting upon claimants a more onerous burden of proof that compensable maltreatment actually occurred. In other words, the experience gained by the Commissioners leads me to the opinion that, though extremely severe maltreatment existed in a large number of Japanese internment camps, it was not so universally prevalent as the materials available to the learned Advisory Commissioner led him to believe.

If, therefore, I were disposed to recommend an amendment of the War Claims Rules with relation to the proof of maltreatment in Japan-operated

camps, such recommendation would be in the direction of modifying the presumption that maltreatment prevailed in all such camps. Since, however, so very numerous claims have already been adjudicated on the present state of the Rules, it would obviously be undesirable to recommend any such restrictive amendment at the present stage, and it is therefore necessary to continue the adjudication of claims on the basis of the War Claims Rules as they stand.

(B) The claimants' counsel relies on a literal interpretation of the expression "effectively controlled" by the Japanese. He contends that the restrictions of movement and communication under which the claimant and his fellow-internees lived at Zikawei constituted "effective control" by the Japanese within the meaning of the War Claims Rules, and that therefore their place of detention was a camp operated by the Japanese, so that the claimant would be entitled to an automatic *per diem* award without proof of actual maltreatment. The claimant himself testifies, however, that Zikawei was not an official camp like other camps that were set up by the Japanese, but he describes it as "a camp for privileged prisoners."

It must, at the outset, be borne in mind that mere internment of enemy aliens by a belligerent power does not constitute maltreatment, and is not compensable either by international law or by the provisions of the War Claims Rules.

Any measure of internment by a belligerent power involves some degree of control by that power. It is therefore obvious that, if any degree of control exercised by the detaining power must (as the claimant contends) be regarded as "effective control" within the meaning of the War Claims Rules, such an interpretation would have the effect of rendering all internment automatically compensable. Clearly, therefore, it is necessary to restrict the interpretation of the words "effectively controlled" by consideration in the light of their context.

As I pointed out in *Case No. 7756*—Reverend Antonio Bonin—the outline presented to the Right Honourable Advisory Commissioner of the tortures and brutalities prevailing in a great many Japanese internment camps led him to the conclusion that substantially all internees in camps operated by the Japanese were maltreated. It is, however, abundantly clear that the Advisory Commissioner did not consider all places where civilians were interned by the Japanese as being Japanese-operated camps. He repeatedly drew an emphatic distinction between "enforced residence under enemy supervision, such as the so-called house-arrest cases", and internment in camps which were "in substance and effect under the control of the Japanese" or which were "operated, openly or in effect, by the Japanese." At page 50 of his Report, he refers to the latter group of camps as being "operated...that is administered or effectively controlled...by the Japanese."

From this emphatic distinction, it is obvious that the expression "effectively controlled" was intended to bear a meaning which would include some measure or degree of control going beyond the supervision necessary to ensure the custody and isolation of the internees. The constituent elements of camp "control" as outlined by the claimant's counsel, such as prohibition of departure, and of writing, telephoning, or otherwise communicating with those outside the camps, are applicable with equal force to Japanese-controlled camps and to places of house-arrest or enforced residence. If individuals under house-arrest were not controlled or restricted from departing from their residences or from communicating with those outside, there would be no real meaning to the expression "enforced residence under enemy supervision"; and yet that type of residence is specifically excluded by the War Claims Rules from the automatic presumption of maltreatment.

In Case No. 9530—Reverend Dominique-Marie Doyon—I indicated some of the factors which collectively (though not necessarily individually or conclusively) might be taken to indicate a pattern of internment falling within the concept of a camp “effectively controlled” by the Japanese. These factors may be summarized as: quartering of Japanese guards; undertaking by Japanese to provide food; dictation of rules of camp life solely by Japanese, without the mediation of any representative of the internees; co-internment of clergymen with civilians and with non-members of their own or related religious Orders; allotment of living space by Japanese; conscription of internees to do cooking and other chores in the camp. That list was not intended to be all-inclusive, but the absence in the present case of any of the usual concomitants of Japanese camp-life strongly indicates the absence of “effective control” such as was contemplated by the War Claims Rules.

In the place of internment here concerned, there were no Japanese guards quartered or otherwise maintained, the food and other necessities of life were procured by the internees themselves on an agreed plan subject to a general system of rationing, and the general regulation of camp-life was carried out through the mediation of the internees themselves or of members of other religious Orders representing them.

I accordingly see no alternative but to approve the conclusion of the learned Deputy Commissioner to the effect that the place of detention at Zikawei was not a camp “operated” or “effectively controlled” by the Japanese, within the intention of the War Claims Rules, and that therefore the claimant is not entitled to an automatic *per diem* award for maltreatment.

(C) As to the question of actual maltreatment, the claimant relies especially on the inadequacy of the food supply, and contends that the Japanese not only refused to supply the claimant and his fellow-internees with food but actively prevented them from obtaining access to food supplies which were available in the locality.

At the time of their internment, the claimant and his fellow-internees had the option of being interned in regular camps operated by the Japanese, or of residing in the premises owned by the French Jesuits at Zikawei. If they had chosen the former alternative, the Japanese would then have been under the obligation of providing food and such necessities of life for them. They chose, however, (no doubt as the lesser of two evils, but definitely from their own preference) the latter alternative, which was secured for them by the active intervention and request of the French Jesuits, of the Apostolic Delegate (Bishop Zanin) Superior of the Mission, and of Bishop Côté, the Diplomatic Representative in China of neutral nations or nations friendly with Japan. Not only is there no evidence of any acts of brutality towards the Canadian Jesuits at Zikawei, but they were apparently treated with deference by the Japanese and they came to occupy, in the claimant's own words, the position of privileged prisoners. The claimant testifies that the Japanese did not consider them as enemies, but interned them, in part at least, for their own protection.

It must, however, be noted that the agreed system of detention included an understanding that the internees should procure their own food supplies. Admittedly, the supply of food which they were able to procure was not adequate. The claimant complains that their food supply was unduly restricted by two factors, (a) shortage of money and (b) the rationing system. He states that they could have got more food if they had had more money. Facilities for borrowing were apparently open to them, but they hesitated to incur the risk of too great indebtedness. Their finances were supplemented by periodic payments from the Canadian Government. The inadequacy of such payments from Canada can hardly be considered as proof of maltreatment by the Japanese in view of the agreed arrangement.

Food supplies were procured for the Canadian Jesuits by an arrangement of pooling with the other residents of the Zikawei Centre, and were purchased and administered through clerical officials nominated for the purpose, (e.g. the purchasing Father, the Father minister, and the Father treasurer). The Japanese had nothing to do with the purchases. Black market supplies were also available, but the use of such a channel was curtailed by lack of funds, as well as by the wish of the internees to carry out as far as possible their agreement with the Japanese, and by the risk of severe penalties involved.

The other restriction of food supplies was effected through a system of rationing, which prevented the internees from obtaining an adequate quantity of nutriment. Not only was the same system of rationing applicable to the civilian population of the locality, but it was equally applicable to the other missionaries who lived (though not interned in any sense of the word) in the Zikawei Civic Centre, including missionaries of Chinese and French nationality, and of other nationalities which were neutral or friendly to Japan. The claimant testifies that the same ration system had been in effect for the other uninterned missionaries for seven or eight months before the arrival of the Canadian Jesuits at Zikawei.

Apart from the problem of food, the Canadian Jesuits at Zikawei were able to maintain a reasonably normal routine of life in their place of residence. They had complete freedom of religious and social contacts with their fellow-residents, and access to libraries which were valuable to them in the continuation of their devotions and studies. They were also authorized, on request in case of necessity, to have access to medical and hospital treatment outside the Zikawei Civic Centre.

I can find in the evidence nothing which would indicate that this claimant, or his fellow-internees, were subjected to any form of maltreatment within the meaning of the War Claims Rules.

As for the personal injury claim, it is obviously founded as a corollary to the claim for maltreatment. Since it is held that no maltreatment, within the meaning of the Rules existed, there can be no valid claim for compensable personal injury. It may very well be that the health of the claimant and of his fellows was injured in certain respects by the hardships and privations incident to residing in an occupied territory during the period of war. This, however, is the result of the existence of a state of war, and cannot be charged either to maltreatment or to actual operations of the war. The War Claims Rules make it doubly clear that consequences flowing from the existence of a state of war cannot be regarded as forming the basis of compensable claims.

I have therefore no alternative but to recommend that the claim for personal injury, as well as that for maltreatment, be disallowed.

As to the claim for \$500 compensation for expenses of repatriation to Canada in 1949, the learned Deputy Commissioner sets out very clearly the two reasons why this claim cannot be entertained. Apart from the fact that this claimant's repatriation expenses were not related in any way to maltreatment, or to injuries arising from maltreatment, it may be noted that in no case arising before the Commission has any award for expenses of repatriation to Canada been recommended. It is true that the Government of Canada made advances to numerous Canadian nationals to assist them in the expenses of their return to Canada, but such advances were always regarded as being in the nature of loans, and the Government has insisted on progressive re-payment as occasion has arisen.

I must approve the learned Deputy Commissioner's recommendation that this portion of the claim also be disallowed.

Incidentally, it may be noted that the attorney and the counsel for the claimant, in a memorandum submitted to the Honourable, the Minister of Justice, complain that the Commission in the first instance accepted two of the claims filed by Canadian Jesuits at Zikawei and recommended awards of compensation to the two claimants concerned, but that the Commission later reversed its decision and ordered a new hearing, whereupon the original decision regarding those two claims was reversed and the claims of the remaining members of the same congregation were also rejected. As a matter of fact, the original recommendations of the Deputy Commissioner related to the two cases concerned have not yet been reversed, but are still under review before the Chief Commissioner in the light of the evidence presented on the occasion of the re-hearing. Assuming, however, that this procedure does amount to a reversal of the decision made in the first instance, I can see no valid objection to the Commission's deciding such cases in the light of the fullest and most recent evidence on record rather than being bound by a decision which may have been reached at the outset on the basis of incomplete evidence, as the claimant's counsel apparently suggests should be done. In other words, if the Commission originally committed an error in the adjudication of those two claims by reason of incompleteness of the evidence then available, the rule of equity and good faith would clearly not require the Commission to be bound by such imperfect decision. These remarks are, however, purely incidental to the present case, and the situation will be dealt with more fully in connection with the two cases directly concerned, namely Case No. 1528—Reverend Adrien Lavarière and Case No. 4699—Reverend L. J. Primeau.

To conclude, I approve the Deputy Commissioner's report without variation, and I recommend that the present claim be disallowed.

Dated this 10th day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6253

Re: G. L. Griffith & Sons Limited

Since the drafting of my recommendation dated 23rd March 1955, I have had occasion to review the claim further, and to consider very fully the question whether, or not, the title to the lost goods had passed from the claimants to a purchaser before the time of the loss.

I have drawn to the attention of the claimants the fact that "copies" of invoices furnished to the Commission contained the words "Goods shipped at Buyer's Risk". The claimants have explained this apparent discrepancy by stating that this notation did not appear on the invoices used for the shipments concerned in 1940, and that when the present "copies" were made the claimants omitted obliterating the words "Goods shipped at Buyer's Risk". Counsel for the Commission, Mr. Batt, informs me that this explanation was also made by the claimants at the time of the hearing of the claim.

I have also discussed the claim on various occasions with the learned Deputy Commissioner, and he informs me that he reached the conclusion that the goods in question were consigned to European representatives of the claimants, rather than to outright purchasers; for that reason, he was of the opinion that the title had not passed to the consignees, but remained in the claimants at the relevant time.

This point presents considerable difficulty, but I am inclined to accept the finding of the learned Deputy Commissioner and to confirm his report and my own recommendation of 23rd March 1955.

Dated this 1st day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6255

Re: Mephram

Deputy Commissioner Hyndman has submitted to me his findings and his recommendation for disallowance of this claim, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has submitted further argument to the effect that the existing War Claims Rules, so far as they disqualify claimants who became citizens of a foreign country shortly before October 23, 1952, are unfair and inequitable. This representation is, of course, directed towards securing rather an amendment to the War Claims Rules, than a revision of the Deputy Commissioner's recommendation. I think, however, that it is proper to refer briefly to the necessity of this provision in the Rules. Admittedly, the date fixed as the date of presentation of a claim is to some extent arbitrary. The fixing of an arbitrary date is, however, obviously necessary. If some predictable date were fixed in advance, and prospective claimants were notified of the date which would be applied, they could defer their applications for foreign citizenship, and so defeat the principle of continuity of national status, which underlies the adjudication of claims based on reparations.

The claimant makes this doubly clear in his present submission, when he says that if he had known that 23rd October 1952 would be fixed as the arbitrary date of presenting claims, he "could have and would have deferred his changing status accordingly". This viewpoint makes it very clear that the fixing of an arbitrary date as the date of presentation of claims is quite necessary.

Pursuant to the War Claims Rules, I have no option but to approve the report of the Deputy Commissioner without variation, and I accordingly recommend that this claim be disallowed.

Dated this 17th day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6256

Re: Mitchell

Deputy Commissioner Choquette has submitted to me his findings and recommendation on this claim, with his reasons therefor.

It appears, however, that the claimant J. Albert Mitchell died on 26th November 1954. By his probated holograph will, he bequeathed unconditionally all his estate to his wife Anna Marie (Kilman). He does not name an executor in his will, but my understanding of the law of the Province of Quebec is that when approval is given by a competent court to a holograph will which names a sole beneficiary, that universal legatee automatically acquires powers and status analogous to that of a personal representative.

Mrs. Mitchell has been furnished with a copy of the Deputy Commissioner's report and has waived presentation of further materials on review.

I find, however, that it is necessary to make some adjustment of the deduction recommended by the learned Deputy Commissioner in respect of compensation received from other sources. That compensation was received from the Government of Canada, but of the amounts so received only \$4,369.25 can be considered as capital compensation. The remaining sum of \$2,500.00 was interim compensation for loss of use of furniture and household effects, and should not be deductible from the capital portion of the award recommended by this Commission. The sum of \$2,500.00, in other words, should be set off *pro tanto* against only the interest factor of the Commission's award. It is also necessary to restate the whole interest factor on the award recommended by the Deputy Commissioner.

With these variations, I approve the report of the Deputy Commissioner, and I recommend that Anna Marie (Kilman) Mitchell as universal legatee of the claimant's holograph will be paid \$8,000.00 as an award for loss of property in Belgium, such payment to be in orders of Priority Nos. 3 (a), 3(b), and 4, and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of:

- (a) \$4,369.25 capital compensation received from the Government of Canada, with interest adjustment from 30th June 1948;
- (b) \$2,500.00 interim compensation received from the Government of Canada, to be deductible *pro tanto* from the net interest factor only of the recommended award.

It is further recommended that the sums deducted under Paragraphs (a) and (b) be refunded from the War Claims Fund to the Crown in the right of Canada by way of subrogation to the rights of the claimant.

One other problem arises upon the adjudication of this award, namely whether, if a claim had been prosecuted before the Belgian authorities, any compensation would have been, or might yet be, paid. Owing to the difficulty of estimating the probability or improbability of recovery on any such claim, I consider it preferable to make my recommendation in this case without any findings on that question, and subject to the exercise of the relevant powers by the Treasury Board.

Dated this 13th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Note: Memo to H. D. Clark, April 19, 1955

"I am adopting the following as an equitable formula for deduction of satisfaction otherwise provided (and repayment to the Government of Canada) in cases where claimants have received, from the Government, interim compensation under the dual headings of "capital" compensation and "non-capital" compensation for loss of use:

- (a) "capital" compensation received, including items for replacement and loss of clothing, should be deducted from the total awards recommended, and refunded *pro tanto* to the Government;
- (b) "non-capital" compensation received, such as for loss of use of furniture and household effects, or of automobile, should be deductible only from the portion of recommended awards relating to interest. Amounts so deducted should be refunded *pro tanto* to the Government;

- (c) it follows that, in the case of awards under the Treaty of Peace with Italy, only "capital" items will be deducted and refunded to the Government, though "non-capital" items may be deducted from interest awards made under the War Claims Rules in respect to the same loss."

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6259

Re: Matthews

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I have also notified the claimant, under the provisions of Rule of Procedure No. 20, to the effect that the \$2,000.00 received from the Government of Canada as non-capital compensation for loss of use of furniture must be deducted from the interest factor of the present award. Such deduction is in accordance with the formula adopted by the Commission in all similar cases. The claimant does not oppose the suggested revision.

The question arises whether a further deduction should be made from the present award to represent the estimated amount which the claimant might have received had an application been made and prosecuted under the German Law of Equalization of Burdens.

Apparently no such formal application was made, but Mrs. Gertrude Maria Matthews, the widow and sole beneficiary of the deceased James Owen Matthews, makes an affidavit in which she states that she inquired at the Department of Adjustment in Wiesbaden if she could receive compensation there. She swears that she was told that she would not receive such compensation because she had already received an award for loss of property owned by her late mother, and the regulations precluded a single claimant from receiving two awards, whether in a representative capacity or otherwise. Mrs. Matthews also deposes that she was given to understand that the receipt of compensation from the Canadian Government would be another reason for refusal of an award by the German authorities.

I am not convinced that the foregoing information received by Mrs. Matthews was either authoritative or accurate. It does, however, appear that a claim was made to the Custodian's Office, Department of the Secretary of State, as early as 24th February 1945; that a subsequent claim was made through the Department of Mines and Resources for interim compensation from the Canadian Government; that Mrs. Matthews made and prosecuted a claim to the German authorities for compensation for loss of her (non-Canadian) mother's property; and that Mrs. Matthews made some official inquiries as to her right to claim from Germany for the loss of her husband's goods. In all the circumstances, I am inclined to the view that all the steps which might reasonably be expected to be taken were taken with a view to obtaining compensation from sources outside the Canadian War Claims Fund. I therefore agree with the apparent conclusion of the learned Deputy Commissioner that the claimant should not be deemed to have received or to expect any compensation otherwise provided for.

With the variation to which I have already referred, I approve the report of the Deputy Commissioner.

I therefore recommend that the claimant, The Royal Trust Company as Executor of the Estate of James Owen Matthews, be paid \$6,479.72 as an award for loss of property by the late James Owen Matthews at Hamburg, Germany,

such payment to be in orders of Priority Nos. 3(a), 3(b), and 4(a), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$2,500.00 received from the Government of Canada, with interest adjustment from 30th June 1948; and subject to further deduction, from the interest factor only, of \$2,000.00 interim non-capital compensation received from the Government of Canada.

I further recommend that there be paid to the Government of Canada by subrogation to the entitlement of the claimant the amounts deducted as aforesaid, in repayment of interim compensation advanced to the claimant: namely, \$2,500.00 and interest thereon from 30th June 1948 at 3% per annum; and \$2,000.00, or so much thereof as may be deductible from the interest factor of the present award due to the claimant.

Dated this 15th day of September, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6357

Re: Henderson

In my report dated 14th September 1955, I noted that one-third of the potential compensation for loss of personal property by the late John Henderson at the sinking of the S.S. "*Lady Drake*" would accrue beneficially to his nieces Mrs. Gertrude Brereton and Mrs. Phyllis Curtis, in equal shares. As Mrs. Brereton had been a citizen of the United States since 1937, she would not be eligible for an award under the Canadian War Claims Rules. The national status of Mrs. Curtis had not then been finally determined, and the question of her beneficial share was therefore reserved for further consideration.

The Department of Citizenship and Immigration has now certified that Mrs. Phyllis Winton Curtis became a citizen of the United States on 3rd March 1930, at the time of the naturalization in that country of her father William Henderson, and that she thereupon ceased to be a British subject. The Department further certifies that there is no record of her having made an application for resumption of British status. It is therefore obvious that Mrs. Curtis has not been a British subject since 1930, and that she was not a Canadian citizen at the presentation of this claim.

I therefore recommend that the remaining one-third of the claim which would pass beneficially to Gertrude Brereton and Phyllis Curtis if they were eligible to claim be disallowed.

Dated this 18th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6423

Re: Les Sœurs de l'Assomption de la Sainte-Vierge

Deputy Commissioner Marion has submitted to me his report, in which he finds that the claimant suffered a loss of \$20,000. from the war-time destruction of two buildings in Aomori, Japan, which were completely destroyed on the 27th of July, 1945.

The learned Deputy Commissioner, however, makes his finding subject to the reservation that the claim against the War Claims Fund may not be com-

pensable owing to the claimant's failure to submit and prosecute a claim for compensation under the Treaty of Peace with Japan.

I have notified the claimant that even assuming the validity of the learned Deputy Commissioner's finding, that the claimant has duly established a loss of \$20,000., I was of the opinion that I should be bound to recommend disallowance of the claim by reason of the claimant's failure to obtain available compensation from an alternative source.

Counsel for the claimant has submitted an elaborate argument in opposition to that opinion. He has relied on contentions presented by him in a number of other somewhat similar cases.

Counsel has specifically referred to a citation on page 1 of the report of the Advisory Commission on War Claims which indicates "that the Secretary of State was in 1948 authorized by Cabinet, inter alia, to ascertain the claims of persons residing or carrying on business in Canada, or of Canadian citizens residing outside of Canada, for loss or damage arising directly from operations of war including claims the partial or full settlement of which was provided for under the peace treaties, or agreements with or legislation of certain countries".

It is obvious, however, that no such direct authority is vested in the War Claims Commission either by the War Claims Rules or Regulations or by the Commission issued pursuant to them. The only context in which the War Claims Commission is authorized to investigate the matter of compensation available from sources other than the War Claims Fund is related to the direction contained in the War Claims Rules, that compensation which is received or might have been received from such alternative sources must be deducted from a recommended award by way of "compensation otherwise provided for".

The present claim is very similar to that for loss of property presented in Case No. 9303—*Les Syndics Apostoliques des Frères Mineurs ou Franciscains*—and in Case No. 10022—*L'Ordre des Dominicains ou Frères Prêcheurs au Canada*.

As I indicated in my reports on those two claims, the Commission has always taken the view that in such circumstances there is an onus on a potential claimant of making some reasonable inquiry as to the availability of a source of alternative compensation, such as that provided by the Japanese Peace Treaty. In addition, it appears that the provisions of the Treaty were a matter of fairly general knowledge both in Canada and particularly in Japan. From the legal point of view, I consider that the foregoing factors would be sufficient to oblige the Commission to deduct from any award recommended on the present claim the amount which might be estimated as available compensation under the Japanese Treaty if a claim had been made and prosecuted with reasonable diligence.

In the present case, however, as in the claim of the Dominican Order, *supra*, there is ample evidence to indicate that the availability of an award from Japan was brought to the notice of the present claimant through two channels:

(a) On 12th January 1953, Mr. A.R. Menzies, Canadian Chargé d'Affaires at Tokyo, wrote to Reverend Father Derouin at Sendai, Japan, as agent for Sister Gisele-Marie, Superior of the claimant Order, indicating that the claimant might have a claim against the Japanese Government in respect of war losses and pointing out that claims for compensation could be filed up to October 28, 1953. Mr. Menzies offered to discuss with Father Derouin at any time the procedure for filing claims. From that letter, it seems obvious that Father Derouin, as agent for the Superior of the claimant Order, knew of the availability of a claim against Japan, and could readily have obtained information regarding the proper steps to take in the prosecution of such a claim.

It may further be noted that at the time of Mr. Menzies' letter, Reverend Father Derouin was the mandated representative of the Diocesan Corporation of Sendai and was charged with supervision of potential claims against Japan for losses suffered by all religious Orders in the Diocese.

(b) The War Claims Branch of the Office of the Custodian, Department of Secretary of State at Ottawa, was notified by Rev. Father Rosario Renaud of the formation of a "Comité national d'entraide missionnaire du Canada" of which he was appointed director. He furnished the War Claims Branch with an official statement outlining that the purpose of the "Comité national d'entraide missionnaire du Canada" was to assist all Canadian religious Corporations and/or their members who had suffered losses in the Second World War, including the Far-East and Japan specifically, in establishing their claims. From a list subsequently furnished by Father Renaud, it is clear that the present claimant was one of the religious Orders which constituted the membership of "La Société d'entraide missionnaire".

On the 6th August 1953, the War Claims Branch forwarded to Father Renaud a copy of "La Loi d'indemnisation pour les biens des puissances alliées du Japon", which Father Renaud has acknowledged on August 12, 1953.

Though I consider the foregoing notifications to have been in the nature rather of courtesies than of legal requirements, they appear to lend strong moral support to the position which the Commission has taken in respect to satisfaction otherwise provided for under the Japanese Peace Treaty.

Under the terms of the Japanese Treaty, the quantum of damages payable for loss or destruction of tangible property which cannot be restored to the owner is based on the sum of money required at the time of compensation for the purchase in Japan of property similar in condition to that of the former property at the time of the beginning of the war. The experience of the Commission is that such a basis of compensation is more generous than the criterion prescribed by the War Claims Rules, namely the market value at 30 June 1941, with deduction for depreciation, if any, up to the time of the actual loss. The only specific exception which we have noticed is the case of a commodity whose post-war market value was lower than the market value in 1941. The Commission has, however, recognized that in cases of small claims for loss of objects of a personal nature, certain difficulties of proof, expenses, and other contingencies might militate against the securing of full compensation from the Government of Japan, and we have therefore allowed an exemption not exceeding the capital sum of \$200 from the application of the deduction of compensation otherwise provided for in respect to such claims.

The last mentioned exemption however, is not applicable to a case of loss of, or damage to, immovable property, as the compensation available under the Japanese Treaty for such losses was invariably greater than that available under the War Claims Rules including interest. The reason for the last mentioned circumstance is that the Japanese Treaty Awards were based on replacement cost at the time of compensation (app. 1955-1957) whereas awards under the War Claims Rules must be assessed at the more conservative valuation of 30th. June 1941, with deduction for depreciation up to the time of actual loss.

For the foregoing reasons as well as those set out in my decisions in the Franciscan and Dominican cases referred to above, I have no alternative but to recommend that this claim be disallowed.

Dated this 17th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6425

Re: *St-Florian*

Deputy Commissioner Marion has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified her Counsel, under the provisions of Rule of Procedure No. 20, of my opinion that it might be necessary to revise the recommendation of the learned Deputy Commissioner by recommending disallowance of the claim for personal injury, and by reducing the maltreatment award from \$1,348.00 to \$429.00, the reduction representing the period during which the claimant was detained at Aomori and Higashi. Counsel has submitted an elaborate argument in support of the contention that the recommendations of the Deputy Commissioner should be maintained without reduction.

The claimant's counsel first stresses the recommendation of the Right Honourable Advisory Commissioner on War Claims that "before the setting up of a tribunal or tribunals there should be established a code defining the war claims that are admissible and settling the basis upon which the compensation is to be determined". In this case, as in the cases of numerous other claimants whom he is representing, Counsel submits that the Commission has no jurisdiction to proceed to adjudication of claims until the recommended code has been duly established.

It appears to me that the cited recommendation for the establishment of a code arose from the modesty of the learned Advisory Commissioner, who in all probability did not anticipate that his Report of 25th February 1952 would be accepted practically *in toto* by the Government of Canada and would thereupon be constituted (with a very few relatively minor exceptions) as the War Claims Rules.

It is obvious, I think, that the establishment of a "code" to which the learned Advisory Commissioner refers has been fully consummated in the form of his own Report with modifications to the extent specified in the Schedule to the War Claims Regulations. On that basis the Treasury Board has already acted upon many thousands of recommendations made by the Commission.

I do not share the contention of Counsel that the recommendations of the learned Advisory Commissioner are "general and vague" and that they do not "effectively include" any definition of any sort; on the contrary, I am of the opinion that no more detailed or specific *a priori* code could properly have been adopted under the circumstances.

Counsel goes on to argue that the Commission has no power to interpret the War Claims Rules and no right to establish the essential terms or conditions of compensation. I can think of no *a priori* set of rules, or of any pre-established code, which would be sufficiently inclusive, exact, and detailed, as to eliminate the necessity for interpretation by the adjudicating tribunal. In all its functioning under the War Claims Rules, this Commission has found that interpretation of the meaning of the Rules is one of its principal duties.

Counsel further submits and argues that the Chief War Claims Commissioner has no power or authority to substitute his own opinions for the findings and conclusions reported by a Deputy Commissioner. This argument by Counsel, carried to its logical conclusion, would eliminate all necessity for the somewhat elaborate machinery of "review" laid down by the War Claims Rules, as the Chief Commissioner, if bound to accept the findings of each Deputy Commissioner, would become merely a rubber stamp in the carrying out of his duties of review. (Curiously enough, the same learned Counsel, in very numerous other cases which he has presented, has urged upon me the Chief Commissioner's duty to reverse findings of fact made by the Deputy

Commissioners, and to recommend awards for maltreatment and personal injury where the Deputy Commissioners have found that the necessary factual bases were not established).

There is, of course, some merit in Counsel's contention that a Court of Appeal normally hesitates to disturb findings of fact alone when made by a tribunal of first instance. In the present circumstances, however, this general principle is subject to the following limitations:

1. The War Claims Rules specifically empower the Chief Commissioner to "approve, with or without variations, or reverse the Deputy Commissioner's findings and recommendations". (Report of Advisory Commissioner, pp. 91 & 92—Eng. text);
2. The findings of the learned Deputy Commissioner which I proposed to reverse in the present group of cases are not findings of simple fact, but involve questions analogous to questions of law, namely the effect which should be given to the actual findings of fact in the light of interpretation of the War Claims Rules. The learned Deputy Commissioner has found that the claimant was a Canadian at all relevant times and was interned at successive places of detention in Japan for a number of successive periods during World War II. Those are findings of fact, and I see no reason to disagree with them. The learned Deputy Commissioner goes on to find that the claimant was under the direct supervision of the Japanese for the whole of the period of detention. This is not a finding of pure fact, but involves a conclusion as to whether the type of supervision to which the claimant was subjected constituted actual operation or effective control by the Japanese of the several places of detention within the meaning of the War Claims Rules. It is on this question that the necessity for review and the consequent function of the Chief Commissioner particularly arises, and the duty of the reviewing Commissioner to reverse the recommendation of the Deputy Commissioner in an appropriate case accordingly becomes clear;
3. Another obvious reason for the provision respecting review by the Chief Commissioner is the necessity of maintaining uniformity of adjudication. If the decisions of the six learned Deputy Commissioners, dealing in a limited time with a vast number of claims at numerous and widely scattered centres throughout Canada, were to be regarded as final, it would be inevitable that various shades of individual opinion would be reflected in the decisions. In order to maintain uniformity of adjudication, it is therefore essential that the reviewing Commissioner should be free to vary or reverse the recommendations of Deputy Commissioner to an extent which is probably greater than that which prevails in courts of law.

The claimant's Counsel advances further specific arguments to the effect that Aomori and Higashi were internment camps operated or effectively controlled by the Japanese, and that the claimant is therefore entitled to a *per diem* maltreatment award in respect of the periods of her detention at those points. As to Aomori, I am still of the opinion that there is no evidence which would form the proper basis for an inference that this place of detention was a Japanese-operated camp. The Commission has consistently disallowed claims for a *per diem* maltreatment award based on detention there. (e.g. *Case No. 9532—Reverend Hebert*). The claimant's detention was in the Convent Hama Machi belonging to her own Order, and there is no evidence that detention at Aomori amounted to anything more than house arrest or enforced residence under enemy supervision, which is not automatically compensable.

As to the place of detention known as Higashi, the evidence of conditions prevailing at this camp is scanty and fragmentary. This place was, however, in the vicinity of Sendai, and the circumstances prevailing in the places of detention there seem to have partaken partly of the characteristics of Japanese-operated camps, and partly of those of enforced residence under enemy supervision. With considerable hesitation, therefore, I am disposed to allow the period of detention at Higashi as constituting internment in a Japanese-operated camp.

As to the claim for personal injury, Counsel contends that the presumption of maltreatment based on detention in a Japanese-operated camp is valid for all purposes, and should be accepted as a potential cause of subsequent physical and mental ailments without further proof of the nature and extent of actual maltreatment, if any. I am entirely unable to agree with these contentions. The learned Advisory Commissioner recommended that internment in a Japanese-operated camp should raise a presumption of maltreatment for the purpose of founding a claim for an automatic *per diem* award. Clearly, however, such presumption was never intended to be available as the basis of a claim for personal injury. In the experience of the Commission, the presumption raised by that portion of the learned Advisory Commissioner's recommendation is purely technical in its nature, and the War Claims Rules recognize the fact that the automatic *per diem* award for maltreatment may be paid by virtue of that presumption in a number of cases where no serious or actual maltreatment occurred. Personal injury, on the other hand, is compensable only if it arises from an operation of war, or if it is the result of actual maltreatment by an enemy custodian, and not if it is caused by conditions arising out of a state of war.

It is therefore necessary to examine the evidence adduced in the present case, in order to determine whether there was any actual (as opposed to merely presumed or technical) maltreatment and, if so, whether such actual maltreatment caused or contributed to an illness resulting in pecuniary loss. The onus of establishing both these factors with reasonable certainty rests on the claimant. The evidence on these points is, unfortunately, rather scanty and incomplete. There is no evidence whatever that the circumstances of detention at Aomori or at Higashi involved any measure of actual maltreatment. There is, however, some slight evidence to support an inference that the claimant was obliged to suffer undue restriction of food and certain other undue privations during the period of her internment at Tatamiya-Cho.

There is also some slight evidence, including a certificate from Dr. G. E. Roy, to the effect that in December 1945 he treated the claimant and prescribed for her one year's rest pursuant to a "diagnosis of nervous and physical depression resulting from physical and mental hardship". The claimant had come to Canada immediately after her liberation from internment.

In the usual case, the Commission does not accord full face value to a certificate of a medical doctor which is not given under oath at a *viva voce* hearing. Such a certificate is, however, more entitled to credence if it relates to an illness occurring immediately after the maltreatment which is alleged to have caused the ailment.

Though I do not consider the evidence in the present case sufficient to establish that the claimant's illness was entirely caused by maltreatment, I am now inclined to agree with the apparent conclusion of the learned Deputy Commissioner that maltreatment may be inferred to have contributed to, or aggravated, the claimant's illness, with its consequent expenses and enforced rest. Unfortunately, there is no conclusive evidence that any substantial medical expenses were incurred, or that any substantial pecuniary loss was suffered by reason of the claimant's enforced rest. I consider, however, that it may be

inferred that some moderate expenses and pecuniary loss were involved and that the amount of \$300.00 recommended by the learned Deputy Commissioner for loss of time and medical treatment is, in all the circumstances of the case, a reasonable estimate of the proportion in which maltreatment contributed to the pecuniary loss involved.

With the variation above indicated in respect to the maltreatment award, I therefore approve the Deputy Commissioner's report, and I accordingly recommend that the claimant be paid:

(a) \$508.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);

(b) \$300.00 as an award for personal injury as aggravated by maltreatment during the period of her internment, such payment to be in order of Priority No. (1-2), and to bear simple interest from an estimated mesne date of 1st January 1946 at 3% per annum.

I also recommend that the claims for repatriation expenses and for transportation be disallowed.

Dated this 19th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6470

Re: McRae

....This is a borderline case between those in which the general presumption of serious maltreatment is available and those in which such presumption is considered to be rebutted. I would resolve the doubt in favour of the claimant by reason of the unusually bad living conditions to which he was subjected for a prolonged period, especially at Buchenwald, where he was in custody for about three months. Food was scanty and nauseating; clothing was ragged and dirty; sleeping accommodation was filthy and unsanitary. As a result of such conditions, the claimant testifies that he lost 40 pounds in weight, and became extremely enervated.

I would recommend that his award be increased to \$200.00....

Dated this 1st day of December, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6566

Re: Dockrill

Deputy Commissioner Bird submitted to me his report dated 31 January 1956, whereby he found, in effect, that the claimant had a common law domicile in Canada at the times of her losses, internment and presentation of claim. I approve this finding of the Deputy Commissioner.

At the date of that report, however, the claimant had not secured a certificate of Canadian citizenship. The claimant has more recently furnished the Commission with a certificate of Canadian citizenship issued to her by the Department of Citizenship and Immigration, and dated 3 May 1956. On a strictly technical interpretation of the War Claims Rules, it might appear that

this certificate was not effective to confer on the claimant the status of a Canadian citizen at the time of presentation of her claim, which the provisions of the Rules fix as having taken place on 23 October 1952.

I take it, however, that the learned Advisory Commissioner's remarks at p. 23 of his Report are primarily directed towards a continuity of national status, and that the dates which he fixed as the dates of presentation were related rather to the question of a cessation of national status than to the culmination of a nascent national status which has been continuous since the time of the loss. On this interpretation of the Advisory Commissioner's recommendation, I would find that the claimant, at the time of presentation of her claim, possessed a nascent Canadian citizenship, which has since been consummated, and which confers on her a Canadian national status at the time of presentation within the intention of the War Claims Rules.....

Dated this 9th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6567

Re: Dockrill

.....By the provisions of the War Claims Rules, a maltreatment award does not survive for the benefit of the estate of the maltreated person, but, if at all, for his beneficiaries as defined by an enumerated list. The late Walter Roy Dockrill was survived by his widow, Mrs. Margaret Estelle Dockrill, and by his two daughters, Mrs. Caroline Glover, and Mrs. Frances Eleanor Moore. If these three were now living they would be entitled to share in the maltreatment award in the proportion of one-half to Mrs. Dockrill and one-quarter to each of the daughters. Mrs. Glover, however, died in 1954.

In *Case No. 2335—Estate of Frank Stewart Murray Gibb*— I recommended that the entitlement to a maltreatment award should not be considered as having become vested until Treasury Board has granted authorization for payment of a recommended award. On the analogy of that case, the share of the late Caroline Glover would not pass to her estate. Since, however, in this case there are other surviving dependents of the late Mr. Dockrill, I am of the opinion that the whole award should survive for their benefit. The widow and surviving daughter would be entitled in equal shares.....

Dated this 21st day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

But: See Amended Recommendation in *Case No. 2335—Re Gibb*.

CASE No. 6607

Re: Marie-Bernard

Deputy Commissioner Marion has submitted to me his findings and recommendations, with his reasons therefor. The learned Deputy Commissioner recommends an award of \$683.00 for maltreatment and an award of \$1,000.00 for personal injury.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified the claimant, pursuant to Rule of Procedure No. 20, that I was of the opinion that the recommendations of the learned Deputy

Commissioner must be reversed and the claims for maltreatment and personal injury disallowed. I mentioned particularly that the period of detention at Suchow amounted to a state of house arrest or enforced residence under the supervision of the enemy and could not be regarded as internment in a camp operated or effectively controlled by the Japanese.

The learned counsel for the claimant, in reply to the aforesaid notice, has indicated his agreement with my opinion that the period of residence at Suchow did not constitute internment for compensable maltreatment, but goes on to estimate that the real claim is for the period of "imprisonment by the Japanese at Shanghai", with alleged attendant maltreatment and alleged consequent personal injury. Counsel refers particularly to a declaration (unsworn) of Sister Saint-Victor, dated 17 December 1954, which is on file and which refers to the conditions of detention at the Convent of Les Sœurs Auxiliatrices du Purgatoire at Shanghai. Learned Counsel submits an argument to the effect that this period of detention constituted internment in a Japanese-operated camp, and that the conditions of internment constituted compensable maltreatment. The facts relative to the detention of the claimant may be summarized as follows:

- (a) Prior to the outbreak of war between Japan and Canada, the claimant was resident in the convent of her Order (Sisters of the Immaculate Conception) at Suchow;
- (b) About 3rd December 1941 she became ill and required hospital treatment;
- (c) From 8 December 1941 the Japanese imposed upon her enforced residence in her Order's Convent at Suchow;
- (d) About 3rd December 1941 she was transported to Peking where she was admitted to hospital and underwent an operation;
- (e) On 24 April 1942 she was discharged from hospital, apparently in good health, and returned to her Convent, where she lived until 15 November 1943;
- (f) On the last mentioned date the claimant was taken by the Japanese to Shanghai, where she was interned in the Convent of Les Soeurs Auxiliatrices du Purgatoire at the civic centre of Zikawei;
- (g) After the termination of the war, the claimant remained in China until 1948, when the mission there was closed, and she arrived in Canada 23rd August.

There is, I think, no question but that the period of detention at Suchow, with the intervening period of hospitalization, amounted merely to house-arrest, and that there was no maltreatment either in a technical or an actual sense.

In my opinion, the same conclusion must be reached regarding the claimant's period of detention at Zikawei.

It must, at the outset, be borne in mind that mere internment of enemy aliens by a belligerent power does not constitute maltreatment, and is not compensable either by international law or by the provisions of the War Claims Rules.

Any measure of internment by a belligerent power involves some degree of control by that power. It is therefore obvious that, if any degree of control exercised by the detaining power must (as the claimant contends) be regarded as "effective control" within the meaning of the War Claims Rules, such an interpretation would have the effect of rendering all internment automatically compensable. Clearly, therefore, it is necessary to restrict the interpretation of the words "effectively controlled" by consideration in the light of their context.

The outline presented to the Right Honourable Advisory Commissioner of the tortures and brutalities prevailing in a great many Japanese internment camps led him to the conclusion that substantially all internees in camps operated by the Japanese were maltreated. It is, however, abundantly clear that the Advisory Commissioner did not consider all places where civilians were interned by the Japanese as being Japanese-operated camps. He repeatedly drew an emphatic distinction between "enforced residence under enemy supervision, such as the so-called house-arrest cases", and internment in camps which were "in substance and effect under the control of the Japanese" or which were "operated, openly or in effect, by the Japanese." At page 50 of his Report, he refers to the latter groups of camps as being "operated. . . . that is administered or effectively controlled. . . by the Japanese."

From this emphatic distinction, it is obvious that the expression "effectively controlled" was intended to bear a meaning which would include some measure or degree of control going beyond the supervision necessary to ensure the custody and isolation of the internees. The constituent elements of camp "control" relied upon in the present case, such as prohibition of contacts with the outside world and with other inmates of the residence, coupled with the attendance of Japanese supervisors to take a periodic roll-call, are applicable with equal force to Japanese-controlled camps and to places of house-arrest or enforced residence. If individuals under house-arrest were not controlled or restricted from departing from their residences or from communicating with those outside, there would be no real meaning to the expression "enforced residence under enemy supervision"; and yet that type of residence is specifically excluded by the War Claims Rules from the automatic presumption of maltreatment.

In *Case No. 9530—Reverend Dominique-Marie Doyon*—I indicated some of the factors which collectively (though not necessarily individually or conclusively) might be taken to indicate a pattern of internment falling within the concept of a camp "effectively controlled" by the Japanese. These factors may be summarized as: quartering of Japanese guards; undertaking by Japanese to provide food; dictation of rules of camp life solely by Japanese, without the mediation of any representative of the internees; co-internment of clergymen with civilians and with non-members of their own or related religious Orders; allotment of living space by Japanese; conscription of internees to do cooking and other chores in the camp. That list was not intended to be all-inclusive, but the absence in the present case of any of the usual concomitants of Japanese camp-life strongly indicates the absence of "effective control" such as was contemplated by the War Claims Rules.

None of the foregoing concomitants of Japanese camp-life were prevalent in the detention of this claimant and her companions at Zikawei. The interference of the Japanese does not seem to have gone in any respect beyond what was necessary to ensure the custody and isolation of those detained. I accordingly see no alternative but to reverse the conclusion of the learned Deputy Commissioner and to hold that the place of detention at Zikawei was not a camp "operated" or "effectively controlled" by the Japanese, within the intention of the War Claims Rules, and that therefore the claimant is not entitled to an automatic per diem award for maltreatment.

As to the question of actual maltreatment, the claimant relies especially on the inadequacy of food and heat. There is no evidence that in these respects the Japanese interfered to restrict the food or heating facilities available for the claimant and her companions, except by general rationing system, which was applicable not only to the residents of the city at large, but also to the members of the religious Orders and other residents of the Convent and of the civic centre at Zikawei. Not only is there no evidence of any acts of brutality

towards the claimant and her companions, but they appear to have been treated with a certain deference by the Japanese and, on the request of the French owners of the Convent, they were admitted to the position of privileged internees. I therefore feel bound to conclude that there was no actual or implied maltreatment of the claimant and her companions at Zikawei, and that therefore I must recommend disallowance of the maltreatment claim.

As to the claim for personal injury, it is based on the contention that actual maltreatment occurred, and must therefore fail pursuant to the disallowance of the maltreatment claim. It is therefore unnecessary for me to enter into any detail as to the consequence of the alleged personal injury. I may, however, refer briefly to the fact that the claimant's 1941 illness and operation arose out of circumstances prevailing before the outbreak of World War II, and therefore could not be in any respect compensable under the provisions of the War Claims Rules.

As to the claimant's latter illness, which was diagnosed and treated by Dr. Dérôme on her return to Canada in 1948, the causes of hypertension and myocarditis are so varied and complicated that in my opinion it is impossible to relate those ailments with any certainty to the conditions of life prevailing during the detention of the claimant either at Suchow or Zikawei.

It is, consequently, unnecessary to examine in detail the alleged causal relationship. Having held that the claimant's internment at Suchow and Zikawei did not constitute maltreatment within the meaning of the War Claims Rules, I am bound to conclude that subsequent personal injury or physical ailments, even if caused or aggravated by the fact of internment, do not constitute the basis of a compensable claim under the Rules. The claimant's alleged illnesses would amount to compensable personal injury only if they were caused by maltreatment; since no maltreatment has been established, the claim for personal injury also fails.

For the foregoing reasons, I reverse the recommendations of the Deputy Commissioner, and I recommend that these claims for maltreatment and personal injury be disallowed.

(Sgd) THANE A. CAMPBELL

Chief War Claims Commissioner

CASE No. 6656

Re: Baribeau

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

It must be borne in mind that hardships and privations suffered during the period of detention by the Russians cannot be taken into consideration in the fixing of an award for maltreatment, the essential basis of which is misconduct by an enemy captor. Nor can hardships endured by the claimant in the period spent in a dinghy before capture. There is evidence that when the Germans captured this claimant, they took him on an overnight trip to Oslo with no medical attention for his injury, and that the trip was made under most strenuous conditions. The claimant also states that he did not receive proper medical attention for about three months after his capture. From the evidence available, it is very difficult to say whether this delay in medical treatment was due to the fault or culpable negligence of the enemy, or not.

There is, however, evidence that, in addition to the incidents mentioned by the Deputy Commissioner, the claimant was subjected to extremely severe

privations in the course of forced travel, and in confinement in successive jails for interrogations. He was subjected to extreme malnutrition, threats, privations, and unsanitary living conditions.

A maltreatment award is not expected to compensate a claimant fully for the hardships and privations suffered during the period of internment. In view, however, of the evidence in the present case, I would recommend that his award be increased to the maximum of \$1.00 per day.

With this variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid \$222.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 9th day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6748

Re: Moore

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that her award should be increased.

The claimant particularly stresses the contention that the amount of compensation for personal injury allowed by the Deputy Commissioner is inadequate, as Mrs. Moore might be forced by conditions in the family to earn her own living or to take a position to augment the family income. As it is not contended that such a situation has arisen in the course of the intervening seventeen years, it would be mere speculation to suppose that such a contingency might arise in the future.

The claimant also contends that the allowance of \$50.00 per annum for the cost of hiring help in the home is inadequate. I agree that the amount is purely nominal, and would not suffice to employ a very substantial amount of domestic assistance. On the other hand, the evidence is not altogether convincing on the causal relationship between the claimant's "*Athenia*" experience and her subsequent partial disability. I am of the opinion that the Deputy Commissioner's recommendation in this respect provides as good an estimate as can be reached of that portion of the claimant's pecuniary loss which might be considered to be due to her "*Athenia*" injury. The Deputy Commissioner's conclusion on this point is founded on a careful consideration of the evidence given at an oral hearing, and I do not feel that it would be proper to disturb it in either direction.

The claimant has been notified, pursuant to provision of Rule of Procedure No. 20, that it would be necessary to revise downward the amount of \$562.20 allowed by the Deputy Commissioner for loss of currency. The War Claims Rules require that no moral claim upon the Fund shall be recognized in favour of persons who had at their disposal means of protecting themselves from loss, to which they should have resorted, but who elected to run the risk themselves rather than make use of such protection. I have invariably interpreted this requirement, in cases involving loss of currency, to mean that the Commission will compensate a passenger for loss of currency only up to the amount reasonably necessary for the completion of his or her current journey. In cases of such amounts, passengers are required by the policy of the Commission to

protect the excess by such forms of insurance as travellers' cheques, bank remittances, or letters of credit. In the case of passengers on the "*Athenia*", the normal limit has been fixed at \$150.00. In view, however, of the considerable distance which this claimant had to travel after arriving in Canada, I intimated my readiness to increase that limit to \$200.00.

The claimant now points out that she would have required sufficient travel money not only for herself, but for her minor daughter who was travelling with her, and contends that the cash allowance should be doubled. I recognize the merit of this contention, but am of the opinion that \$300.00 would be the limit of normal requirements for travelling expenses for both passengers, on the assumption that their transportation changes had already been paid for the whole journey. This would mean a reduction, in the amount of the recommended property award, of \$262.20.

Certain adjustments are also necessary in connection with the computation of interest. The recommendation for personal injury is based on an annual expense estimated at \$50.00 per year for a period of 20 years. This is in the nature of special damages, and an equitable computation of interest would accordingly have to be made from an estimated mesne date, say, 3rd September 1949. On the other hand, the claimant would be entitled to interest on the total property award from 3rd September 1939 until the date of payment of the British Government award, with interest on the balance from that date.

As to the eligibility of the claimant from the point of view of national status, the evidence is not altogether conclusive, but I am prepared to accept the Deputy Commissioner's findings of fact to the effect that the claimant was, at the time of the sinking of the "*Athenia*", a British subject having a common law domicile in Canada, and that at the time of presenting her claim she was a Canadian citizen.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

(a) \$1,000.00 as an award for personal injury to herself at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. (1-2) and to bear simple interest from an estimated mesne date of September 3, 1949 at 3% per annum;

(b) \$795.50 as an award for loss of property on the same occasion, such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$398.70 received by the claimant and her daughter Miss Dorothy Moore from the Government of the United Kingdom, with interest adjustment from 17th April 1940.

Dated this 29th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6766

Re: La Communauté des RR.SS. Franciscaines Missionnaires de Marie

Deputy Commissioner Choquette has submitted to me his findings and recommendation on the claims by the above-named religious Order for the maltreatment and death of its late member Sister Marie Catherine Agnès.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted a supplementary argument in support of the contention that the Deputy Commissioner's disallowance should be reversed and an award recommended.

As to the claim for maltreatment, an award under this heading is regarded by the War Claims Rules as being in the nature of a solatium and as being of a highly personal nature with reference to the person maltreated. If the latter dies before receiving an award, his award survives for the benefit of his personal dependents, but not for the benefit of his estate or of any person or corporation outside the restricted list of dependents enumerated in the report of the Right Honourable Advisory Commissioner. For these reasons, it is not possible to recommend the granting of a maltreatment award to the religious Order of which the late Sister was a member, even though it may be successfully contended that the Order stood in loco parentis to the member concerned. I have therefore no alternative, under the provisions of the War Claims Rules, but to approve the recommendation of the Deputy Commissioner.

As to the claim for death, the deceased Sister was liberated from internment on 15 August 1945 and returned to her missionary station. Shortly afterwards the locality was invaded by the Communists. She died on 10 December 1950, more than five years after the termination of World War II. It is unfortunate that no evidence is available regarding her state of health or other activities during the intervening period. Counsel for the claimant admitted at the hearing that evidence was not available to establish the relation of cause and effect between the late Sister's internment and her death. It is difficult to say what circumstances or events may have happened in the period between 1945 and 1950 to cause or accelerate her death. Since the onus is on the claimant of establishing the cause of death by at least some evidence which might form the basis of a reasonable inference, I have no alternative but to approve the Deputy Commissioner's recommendation on this branch of the claim.

Having reviewed the Deputy Commissioner's report, I approve it without variation, and I accordingly recommend that this claim, both for maltreatment and for death, be disallowed.

Dated this 26th day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6769

Re: Sr. Marie de St-Fridulphe

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, counsel for the claimant has not submitted any additional materials, or any specific argument applicable to the merits of this individual case. He has, however, reiterated the general objections which he has made in a number of somewhat similar cases to the validity of the Deputy Commissioner's decision, to the legality of the Commission's proceedings, to the absence of so-called "code", to the absence of special rules for the benefit of charitable organizations, and to the absence of recommendations for amendments of the War Claims Rules.

The submission of arguments of such a general nature, and the avoidance of comments on the specific facts and peculiar merits of the case on hand, are not helpful to the Commission in conducting a review of the claims here involved. I have already dealt in some detail with the general arguments advanced by claimant's counsel in my report in *Case No. 6793—Sr. Marie de St. Ymer*—and in my report in *Case No. 6078—Rev. Rosario Renaud*.

Unassisted, therefore, by any specifically relevant arguments of the claimant, I have carefully reviewed this claim, and in particular the report of the learned Deputy Commissioner. The learned Deputy Commissioner sets forth so clearly, and in such detail, his reasons for the disallowance of the personal injury claim, and of the claim for maltreatment during detention in the Sacred Heart Convent at Peking, that I need add very little to his comments. I may merely indicate that a claim for personal injury, unless caused by an actual operation of war such as bombing, must be based on actual and specifically established maltreatment, which is entirely lacking in the present case. Though the relatively short and early period of internment at Weihsien is sufficient to establish the technical basis for a *per diem* maltreatment award, it does not carry with it any proof of actual or specific maltreatment such as would form the basis of claim for compensable personal injury.

Having reviewed the report of the Deputy Commissioner, I approve it without variation.

I accordingly recommend that the claimant be paid \$146.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese (at Weihsien) such payment to be in order of Priority no. (1-2).

I recommend that the claims for personal injury and loss of property, as well as the claim for maltreatment in the Sacred Heart Convent at Peking, be disallowed.

Dated this 1st of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6793

Re: Sister Marie de St. Ymer.

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has omitted presentation of any further materials, with the exception of general objections to the legality and jurisdiction of the Commission, the absence of a so-called code and definitions, the absence of special rules relating to Religious Orders and their members, and the failure of the Commission to recommend amendments to the Rules as authorized by the Report of the Advisory Commission on War Claims. These arguments are, in my opinion, entirely irrelevant to the consideration of the matters issue in the present case. I have dealt with the claimant's general objections in considerable detail in my report on *Case No. 6078—Reverend Rosario Renaud*.

The portions of the claim which were disallowed by the learned Deputy Commissioner consisted of the portion of the maltreatment claim relating to detention at the Convent of the Franciscan Order at Lipa, and of the claim for personal injury.

As to the personal injury claim, the reasons for disallowance are very clearly stated in the report of the learned Deputy Commissioner, and are not specifically disputed by the claimant on review. I am in full agreement with the reasons and decision set forth by the Deputy Commissioner in his report.

As to the period of detention at Lipa, this is referred to in the statement of claim as "protective custody", and the evidence presented confirms the Deputy Commissioner's conclusion that the detention at that place was obviously a form of house arrest, or enforced residence under enemy supervision, which is not automatically compensable under the War Claims Rules.

Incidentally, I may refer to a typographical error in the learned Deputy Commissioner's report, where he refers to a period of 130 days of internment at Los Banos. This should obviously read 230 days, but the mistake does not affect the ultimate result, as the learned Deputy Commissioner allows a *per diem* award totalling \$230.00 for this period.

I have also notified the claimant, in pursuance of Rule of Procedure No. 20, that I consider it necessary to deduct from the award for loss of property the amount which the claimant might have received by the exercise of due diligence in the prosecution of a claim against the Philippines War Damage Commission. Counsel for the claimant protested against the proposed deduction, and quotes at length from the Report of the Advisory Commission on War Claims to indicate what he considers to be the proper procedure for the Commission to adopt in relation to satisfaction otherwise provided for. The procedure outlined by the learned Counsel is substantially accurate so far as relates to alternative sources of compensation against which a claimant has presented a claim or is still eligible to do so. In the present case, however, the Philippines War Damage Commission is no longer an available source of alternative compensation, and there would be no purpose either in the Commission's assessing the probability of recovery against such a source, or in the claimant's assigning to the Crown her entitlement to such recovery. The question arising in this case is whether the claimant should be deemed to have received satisfaction otherwise provided for from the Philippines War Damage Commission by reason of her neglect or default in presentation of a claim against that source. The claimant has shown no reason why she should not have known that she would lose her entitlement to such alternative compensation if she did not apply within a certain time. In fact, there is no evidence that the claimant ever made a single inquiry about the availability of such alternative compensation or about her eligibility to present a claim against it. In all the circumstances, it seems to me that the Commission is bound to regard the claimant's failure to present a claim to the Philippines Commission, or even to inquire about the availability of such a claim, as neglect or default. It must therefore be deemed that the claimant has received payment from the Philippines Commission of the amount which she might have received but for such neglect or default.

The information available to this Commission is that the Philippines War Damage Commission laid down the requirement as to eligibility that an alien claimant must have resided in the Philippines for a period of five years prior to 7 December 1941. As the present claimant was resident in the Philippines from 4 January 1932, she clearly falls within this provision of eligibility. It further appears that property claims before the Philippines Commission fell into two orders of priority: those of \$500.00 or less were paid in full, and larger claims were paid on the basis of \$500.00 plus 52.5% of the excess.

As intimated in my notice, however, I am disposed to make allowance for the expenses, contingencies, and other obstacles which might have been in the way of the claimant's obtaining full compensation from the Philippines Commission for the loss of her property. Making such allowance, I consider 50% of the award recommended by the Deputy Commissioner as being a fair estimate of the amount which the claimant might, with reasonable diligence, have received from the Philippines Commission. It is accordingly necessary to deduct \$190.00 from the property award recommended.

With the foregoing variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid:

(a) \$230.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);

(b) \$380.00 as an award for loss of property in the Philippines, such payment to be in order of Priority No. 3(a), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$190.00 deemed to have been received from the Philippines War Damage Commission, with interest adjustment from an estimated mesne date of 1st January 1950.

I further recommend that the claim for personal injury, and the claim for maltreatment at Lipa be disallowed.

Dated this 31st day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6805

Re: La Communauté des RR.SS. Franciscaines Missionnaires de Marie

Deputy Commissioner Choquette has submitted to me his findings and recommendation on the claims by the above-named religious Order for the maltreatment and death of its late member Sister Marie Abra.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted a supplementary argument in support of the contention that the Deputy Commissioner's disallowance should be reversed and an award recommended.

For the reasons mentioned in *Case No. 6766*, a claim by the same Order for the maltreatment and death of Sister Marie Catherine Agnès, I have no alternative but to approve the Deputy Commissioner's disallowance of the maltreatment claim.

As to the death claim, the evidence concerning the conditions of internment of the deceased Sister Marie Abra is unfortunately not very definite or clear. The first period of her detention at Bhamo was in the convent of her Order at that point, and was apparently in the nature of enforced residence under enemy supervision. As to the relatively short period of detention at Rangoon, it is presumed that the period was technically in a camp operated by the Japanese, but there is no evidence of any specific or actual maltreatment. As to the subsequent period including the voyage to Tavoy and internment at that point, the statement of claim definitely says that the internees were not maltreated either on the voyage or afterwards. On the whole, it appears to me that the somewhat scanty evidence available entirely failed to establish any actual maltreatment. It may be that the evidence is sufficient to give rise to purely technical presumption of maltreatment which would be sufficient to entitle the late Sister Marie Abra, had she lived, to a *per diem* maltreatment award. The presumption of maltreatment in Japanese-operated camps is related, in the Rules, solely to the granting of *per diem* maltreatment awards, and is not made available for any other purpose. To hold that the technical presumption of maltreatment arising in such circumstances would be available as the basis for a personal injury or death award without proof of any specific or actual maltreatment would be contrary to the underlying principle laid down by the War Claims Rules to the effect that the burden of proof is upon the claimant to establish the claim with reasonable certainty. There is in the present case no evidence either that the claimant was actually maltreated, or that her death was caused or accelerated by maltreatment. The evidence indicates, on the other hand, that the cause of her death was her own very delicate state of health, aggravated by circumstances normally prevailing dur-

ing internment and arising out of the existence of a state of war. Such circumstances do not form the basis of a compensable claim for personal injury or death. I therefore have no alternative but to approve the Deputy Commissioner's recommendation for disallowance of this claim.

Having reviewed the Deputy Commissioner's report, I approve it without variation, and I accordingly recommend that the claims for maltreatment and death be disallowed, as well as the claim for loss of property.

Dated this 26th day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6807

Re: St. Fale

Deputy Commissioner Choquette has submitted to me his findings and recommendations in each of the above-noted cases, with his reasons therefor.

Each of the claimants has been furnished with a copy of the Deputy Commissioner's report, and has also been notified, pursuant to the provisions of Rule of Procedure No. 20, that I considered the evidence insufficient to support a number of the conclusions reached by the learned Deputy Commissioner, and his consequent recommendations. I referred particularly to the maltreatment awards for the periods of detention at Rangoon and Tavoy, and to the personal injury awards in the two cases.

I accordingly suggested that additional evidence should be obtained before my final decision on the merits of the two cases, and that in particular the evidence of any medical man who treated the claimants in Canada should be produced. For the purpose of obtaining such further evidence, I appointed Deputy Commissioner Marion as a Special Examiner under the provisions of Rule of Procedure No. 27 (c) and notified the claimant's counsel of the date and place of hearing before the Special Examiner at Montreal. The claimants' counsel advised the Commission that he did not have any further proof to submit except that which was already on record, and he therefore did not attend the projected hearing.

From the evidence on file, it is extremely difficult to determine whether the places where these claimants were detained were, or were not, camps operated or effectively controlled by the Japanese. Some of the places of detention, in particular, appear to partake of the characteristics of house arrest or enforced residence under enemy supervision. With considerable hesitation, I am, therefore, disposed to accept the learned Deputy Commissioner's findings as to the internment of the claimants in Japanese-operated camps. Though the officially recognized date of liberation of prisoners of war in the Far East was usually August 15, the situation may have been slightly different in Burma, where the present claimants were detained. In the circumstances, it appears proper to fix 2nd September 1945 as the date of their liberation. On that basis, the *per diem* award for Sister Marie de St. Fale would be computed at \$988, and that of Sister Marie Uriel at \$889. With the foregoing slight variations, I approve the *per diem* awards for maltreatment recommended by the learned Deputy Commissioner.

As to the claims for personal injury, the failure of the claimants to take advantage of the opportunity to submit further detailed evidence renders the task of the Commission exceedingly difficult.

As I pointed out in *Case No. 7749—Rev. Henri Beaudoin*—a compensable claim for personal injury must be based on reasonably certain proof that the ailments complained of were caused either by actual operation of war, or by maltreatment in the course of detention by an enemy captor. The present cases are obviously concerned only with the second causative factor, namely maltreatment.

I am prepared to approve the recommendations for *per diem* maltreatment awards on the sole technical ground that the evidence has established, to some slight extent, a measure of operation or effective control by the Japanese of the places of internment within the meaning of the War Claims Rules, and that therefore the granting of *per diem* maltreatment awards becomes automatically effective. The presumption of maltreatment in Japanese-operated camps, however, is raised by the War Claims Rules for the sole purpose of enabling the Commission to recommend *per diem* maltreatment awards without proof of the actual conditions prevailing during internment. Personal injury, on the other hand, remains to be established by each claimant according to the principles prevailing in the civil courts, though in some respects the rules of evidence may be somewhat relaxed.

In the present cases, there is little or no evidence as to the method of treatment of the claimants by their Japanese captors. In fact, such evidence as there is indicates that their alleged internment differed very little, if at all, from house arrest or enforced residence under enemy supervision. The undernourishment and other privations and exposures which they suffered appear to have arisen largely, if not altogether, from the existence of a state of war, and to have been common to the residents of that tropical country in war time. There is, in my opinion, no evidence of specific maltreatment by the Japanese and, with all deference to the opinion of the learned Deputy Commissioner, I am unable to find in the evidence any proof that the ailments of these claimants (and consequent pecuniary loss) were caused either by operation of war or by maltreatment. I therefore find myself obliged to reverse the learned Deputy Commissioner's recommendations for personal injury awards.

I agree with the opinion of the learned Deputy Commissioner that the circumstances surrounding loss of property by Sister Marie Uriel do not constitute a compensable claim under the War Claims Rules.

In other respects I approve the report of the Deputy Commissioner, and I accordingly recommend that the claimants be paid:

(a) to Sister Marie de St. Fale, \$988.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in the Order of Priority No. (1-2);

(b) to Sister Marie de St. Fale, \$300.00 as an award for loss of property in Burma, such payment to be in Order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum;

(c) to Sister Marie Uriel, \$889.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in Order of Priority No. (1-2).

I recommend that the claims for personal injury, as well as the claim of Sister Marie Uriel for loss of property, be disallowed.

Dated this 4th day of June, A.D., 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6814

Re: Harrison

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

It must be borne in mind that a maltreatment award cannot be directed towards compensating a claimant for pecuniary loss, even in cases where such loss is a direct result of malnutrition or other improper treatment as a prisoner of war. The maltreatment award is at best a moderate personal solatium. If the claimant's dental trouble was clearly attributable to conditions of active service and internment, he should have applied to the Canadian Pension Commission for relief.

The claimant now states that during his internment he suffered a broken nose on two occasions and that due to insufficient and inadequate medical treatment, his nose did not heal properly and consequently still gives him trouble. As indicated in numerous previous reports, the inadequacy of medical treatment is difficult to establish, and it is particularly difficult to determine whether the failure to supply proper medical treatment in any given case constituted a culpable fault on the part of the enemy captor so as to justify a special maltreatment award. It appears from this claimant's official record that his nose was broken twice while he was "engaged in sport games". The availability of games of this kind would indicate that the enemy's lack of consideration for the welfare of prisoners was not entirely unrelieved.

After a very careful consideration of this claim, I am of the opinion that there is no evidence to justify an increase in the award recommended by the Deputy Commissioner.....

Dated this 9th day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6845

Re: Carragher

.....The claimant's present submission is that a much larger award be granted to him, principally on the ground that he has never at any time made application to the Government, nor attempted to receive a pension of any sort on account of the injury and disfigurement caused by the burning of the aeroplane in which he was shot down, nor for the sufferings caused by lack of food and treatment as a prisoner of war.

A maltreatment award cannot be directed towards providing pecuniary compensation, and the existence or non-existence of a pension is entirely irrelevant to the computation of a maltreatment award. Sufferings from injuries caused in action before capture cannot be taken into consideration as maltreatment. The lack of food and other privations suffered by the claimant as a prisoner of war have been fully considered by Deputy Commissioner Marion, and his award is at least in line with those recommended for other claimants who were in custody for a comparable period and were subjected to similar

incidents of maltreatment. As a matter of fact, he appears to have benefitted to some extent by the practice of the Commission in recommending a normal minimum award of \$200.00 in all cases of serious maltreatment. . . .

Dated this 24th day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 6961

Re: McNichol

. . . The claimant stresses particularly the hardships and privations which he endured in the period following his escape from custody. Though these privations were undoubtedly extremely severe, and though they arguably entitle claimants to some other form of remuneration, they cannot be classed as maltreatment, the essential basis of which is improper conduct on the part of enemy captors. For the reasons set forth in *Case No. 2609—F/Lt. H. Brooks*—the Commission is bound to disallow claims by former prisoners of war for maltreatment in the period during which they were escapees. . . .

Dated this 1st day of December, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7118

Re: Okrainec

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant limits his present submissions to the contention that he is entitled to the basic award recommended in my Report under *P.C. (1953) 857*. Such basic award is available only in cases where the presumptions of maltreatment which I recognized in that Report have not been rebutted. As indicated in the report of the learned Deputy Commissioner, hospitalization for substantially the whole period of detention is normally considered to rebut those presumptions, and to return to the claimant the onus of proving specific incidents of maltreatment. The fact of hospitalization in itself indicates care rather than the absence of care, and the general evidence before the Commission gives rise to the presumption that established prisoner of war hospitals in Europe were basically well equipped, well furnished with expendable supplies by the Red Cross, and usually staffed by British or Commonwealth medical officers and attendants. The claimant has given no evidence to displace this inference, and the only complaint of actual maltreatment which he makes is the conditions prevailing in the course of a three-day box car trip. I have reviewed this claim in conjunction with a number of others of a similar nature, and am of the opinion that the award appropriate to the incidents disclosed in evidence would be \$30.00.

With this variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid \$30.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 16th day of May, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7152

Re: Chanler

By my report of the 7th December 1955, the claim for compensation for personal injury was reserved for later consideration, pending the taking of oral medical evidence.

I subsequently proceeded at Moncton, N.B., on 22 March 1956, to take the evidence of Dr. Harry Lorne McKeen and Dr. Eli Wilson Ewart. Mr. Richard M. Palmer represented the claimant at this hearing.

Dr. McKeen was the Chanlers' family physician. He first attended Mr. Chanler professionally on 14th May 1943, when the claimant had been in bed for two days with an acute condition of the knee-joint, which was swollen, inflamed and painful. He diagnosed the ailment as acute arthritis of the knee-joint, and recommended short wave therapy, which was applied by Dr. McKeen's nurse, and local heat therapy which was taken by the claimant at home. The knee, however, became progressively worse in the following three years, and the claimant's movements became more restricted, so that he had great difficulty in getting around at his work. He retired early in 1946, and moved away from Moncton shortly afterwards.

Dr. Ewart, who as a well known specialist in Orthopaedic surgery, was called into consultation by Dr. McKeen, and diagnosed the ailment as a degenerative type of arthritis involving the knee-joint, which was probably traumatic in its origin.

Though neither of the medical men examined could express a definite opinion as to direct causal relationship between the claimant's injury at the "*Athenia*" sinking and his subsequent arthritic condition, both appeared to be of the opinion that the "*Athenia*" injury could be a predisposing or aggravating factor in the development of the ailment. From the evidence of the two medical men, I would infer that such was the case. In a somewhat similar case, I approved the finding of Deputy Commissioner Marion that the subsequent arthritic condition of the claimant was greatly accentuated as a result of her experience at the sinking of the "*Athenia*": Case No. 1560—*Edith Emma Broadbent*.

The claimant was personnel manager of T. Eaton Company Limited at Moncton, and was apparently obliged by his arthritic ailment to retire approximately three years prior to his normal retirement age as an employee of the Company. It is therefore alleged that the claimant's premature retirement lost for him not only three years salary and bonus, totalling approximately \$6,000.00 per year, but also deprived him of benefit of pension arrangement to which he would have been entitled at his normal retirement age.

As to the loss of pension benefit, there are many factors of remoteness and contingency which make it difficult to estimate the exact benefit which was lost by premature retirement. Though I have found that the "*Athenia*" injury was a contributing factor in the development of the arthritis which necessitated the claimant's premature retirement, it is impossible to assess, with any degree of

mathematical accuracy, the proportion in which the injury contributed to the arthritis, and to the consequent loss of salary, bonus, and pension benefits.

On a very careful examination of all the factors involved in the case, I am of the opinion that \$7,500.00 would be a fair estimate of the proportion of the claimant's pecuniary loss directly attributable to his injury at the sinking of the "*Athenia*". That sum is, of course, exclusive of \$78.00 which the claimant paid to the two medical men who gave evidence. There are also certain other medical expenses incurred by the claimant, for which vouchers cannot be produced; I would estimate them at \$50.00. The total compensation to be recommended would therefore be \$7,628.00 and interest should run from an estimated mesne date, say, 1st May 1945.

Reference is also made in the argument of Counsel to medical expenses incurred for Mrs. Chanler. No evidence is adduced as to the amount of such expenses, or the cause of the ailment for which she was treated.

For the foregoing reasons appearing from the evidence taken since the Deputy Commissioner's report, I would therefore reverse his disallowance of the personal injury claim and recommend that the claimant John Armstrong Chanler be paid \$7,628.00 as an award of compensation for pecuniary loss caused by personal injury to himself at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. (1-2) and to bear simple interest from an estimated mesne date of 1st May 1945 at three percent per annum.

Dated this 26th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7157

Re: Markham

This case consists of three branches, namely a claim for loss of property belonging to the late Mr. Markham in Malaya; a claim for pecuniary loss resulting to his widow, Mrs. Mae Lesley Markham (Marini), by reason of his death; and a claim for pecuniary loss resulting to his mother, Mrs. Lizzie Markham, from his death. The several claims are dealt with in three separate reports and two supplementary reports by Deputy Commissioner Bird.

The claimants have been furnished with a copy of the Deputy Commissioner's reports, and have waived presentation of further materials on review.

After the making of the three original reports by the learned Deputy Commissioner, it was ascertained that two items of information which might have had a bearing on the adjudication of the case had not been disclosed at the hearings, namely: the fact that the widow Mrs. Mae Lesley Markham had been married to one Marini on 16th March 1956, and the fact that the mother Mrs. Lizzie Markham had two other sons besides the deceased who were potential contributors to her maintenance.

When these items were revealed to the Commission, I referred the case back to Deputy Commissioner Bird to obtain his opinion as to what effect, if any, the undisclosed information would have had on his consideration of the claims if it had been available to him before the time of the making of his reports.

In his two supplementary reports, the learned Deputy Commissioner makes it clear that, despite the unfortunate non-disclosure of the two items of information at the time of the hearings before him, he does not consider that they would have, if disclosed, had any effect on the conclusions and recommendations at which he arrived.

In relation to the remarriage of Mrs. Mae Lesley Markham (Marini), he points out that the pecuniary loss which he assesses on her behalf was based on the prospective earnings of her late husband up to but ceasing at 1st January 1956. Obviously, therefore, the effect of Mrs. Markham's (Marini) remarriage after 1st January 1956 would have no bearing on the amount of loss of benefit of earnings based on computation up to that date.

As to the existence of two other sons, who were potential contributors to the maintenance of Mrs. Lizzie Markham, the learned Deputy Commissioner concludes that the late Henry Hugh Wilton Markham, had he lived and continued to enjoy the same income as prior to his death, would have contributed the same amounts as previously paid by him, irrespectively of the extent to which either or both of the other sons might have contributed to their mother's maintenance. I agree that the evidence upholds this conclusion.

It remains to capitalize several of the annuities and other deferred payments referred to by the learned Deputy Commissioner, and the following results are taken from the computations made by the officials of the Department of Finance:

The 15th February 1942 value of \$6,000 payable in 14 equal annual instalments, the first on 15th August 1942 would be	\$ 4,913.26
The 15th February 1942 value of \$60,000 payable in 10 equal annual instalments, the first on 1st January 1947 would be	45,644.37
The 15th February 1942 value of \$10,120.63 prospectively payable on 15th February 1975 would be	3,815.74
The 1st January 1946 value of \$4,176 prospectively payable on 15th February 1975 would be	1,767.34

I have mentioned the last item because the accelerated value of the awards which Mrs. Markham (Marini), as sole beneficiary of her late husband's estate, will have received from the claims for property loss, both from the War Claims Fund and from the Malayan War Damage Claims Commission, must be deducted from the death award recommended on her behalf as a partially compensated pecuniary benefit arising from the death of the deceased.

The net value of the "death" award to be recommended for the benefit of Mrs. Markham (Marini) will therefore be \$45,644.37 (representing the 1942 capitalized value of the widow's estimated share of her husband's lost earnings) minus \$3,815.74 (representing the 1942 accelerated value of the amount received by the widow from her husband's estate exclusively of the present claims) minus \$1,767.34 (representing the 1946 accelerated value of the payments received and to be received by the widow an account of loss of her husband's property including the amounts paid by the Malayan Commission and the balance to be received from the War Claims Fund).

As to the award for loss of property, I am of the opinion that interest adjustments (relating to deductions) could be much more simply, and just as accurately, made if they were computed as of the estimated mesne date of the payments received from the Malayan War Damage Claims Commission, say, 1st April 1953.

Having reviewed the Deputy Commissioners reports, I approve his findings and recommendations subject to the foregoing comments and computations.

I therefore recommend that the claimant Mrs. Mae Lesley Markham (Marini), as Executrix of the estate of her late husband Henry Hugh Wilton Markham, be paid the following sums:

(a) \$4,913.26 for Mrs. Lizzie Markham as an award for pecuniary loss sustained by reason of the death of the late Henry Hugh Wilton Markham, such payment to be in order of Priority No. (1-2) and to bear simple interest from 15th February 1942 at 3% per annum;

(b) \$40,061.29 as an award for pecuniary loss sustained by herself, the said Mae Lesley Markham (Marini), by reason of the death of her former husband the late Henry Hugh Wilton Markham, such payment to be in order of Priority No. (1-2) and to bear simple interest from 15th February 1942 at 3% per annum;

(c) \$4,176.00 as an award for loss of property belonging to the late Henry Hugh Wilton Markham in Malaya, such payment to be in orders of Priority Nos. 3(a) and 3(b) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,707.63 received from the Malayan War Damage Claims Commission, with interest adjustment from an estimated mesne date of 1st April 1953.

Dated this 2nd day of February, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7158

Re: Redgers

... I cannot but agree with the learned Deputy Commissioner that it would be a fantastic conclusion to find that the claimant was a dependent of his daughter, who met her death at the sinking of the SS "Athenia" when she was 17 years of age...

I accordingly recommend that this claim be disallowed.

Dated this 9th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7159

Re: Redgers

... The claimants now submit further arguments, to the effect that Mrs. Redgers' operation for the removal of gall stones in 1947 was necessitated by a nervous condition and chronic stomach trouble directly resulting from her experience at the sinking of the SS "Athenia". I agree with the learned Deputy Commissioner Hyndman that no such conclusion can be reached with any reasonable degree of certainty...

Dated this 14th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7160

Re: Redgers

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that her award should be increased, and that an award for personal injury should be allowed.

As regards the personal injury claim, the objection to the adjudication is that the claimant did not have an opportunity of cross-examining Doctors

Hermann and Samis, whom the Deputy Commissioner examined at Ottawa. If these two medical men had contradicted the evidence presented by the claimant's medical witness, I should consider this objection to be a valid one, and should feel that arrangements ought to be made to provide an opportunity for cross-examination. It appears, however, that Dr. Lowery in Toronto admitted that the cause of cancer or tumour was unknown to the medical profession, and would not go beyond stating that in his opinion the claimant's tumour might possibly be a result of the blow sustained by the claimant at the time of the accident on the "*Athenia*". The evidence of the Ottawa doctors therefore does not go to contradict the evidence of the Toronto doctor, but merely to substantiate the lack of conviction disclosed by Dr. Lowery's evidence. I see no alternative but to approve the Deputy Commissioner's recommendation that the personal injury claim be disallowed, except for the disbursements hereunder noted.

As to the claim for loss of property, there are so many discrepancies and errors in the presentation of this claim that it was extremely difficult for the Deputy Commissioner, and is perhaps even more difficult for me, to arrive at an equitable award.

... But in an itemized list endorsed on the Statement of Claim the total value of the articles listed is set forth at \$2,759.50. In that addition there is an error of \$50.00, the correct total being \$2,709.50. In that connection it may be noted that the claim for personal injury, \$1,500.00, is the last item in the column of valuations, but though it appears above the total, it has not been added into the total. The total valuation of the property lost, as computed by the itemized list endorsed on the Statement of Claim, is therefore \$2,709.50. In the argument on review, claimant's counsel mentions that following the hearing the claimant requested that she be permitted to amend her claim for lost property to the value at the time of the loss, namely \$2,065.00.

As I have not before me any computation of the last mentioned amount, I am unable to understand just how this is arrived at, but I presume that it is intended to represent the listed amount of \$2,709.50 with an allowance for depreciation.

The item of \$3,280.50 appearing on Form A is, so far as I know, entirely unexplained, and it is only because the learned Deputy Commissioner appears to have arrived at his estimate of values of lost goods partly by using that amount as a starting point, that I attempt in any way to revise the final valuation at which he arrived.

At this point I may properly comment on the item of \$515.00 claimed for cash lost. The Commission has followed the principle that, even if credible and corroborative evidence is given regarding the possession of a sum of cash by a passenger on a ship such as the "*Athenia*", only such an amount can be allowed as would be necessary for the reasonable travelling expenses of a claimant. Amounts of cash carried in excess of that should be protected by some such form of insurance as Travellers' Cheques or Letters of Credit. In this particular case, it appears that the money carried was Sterling currency, and there was apparently an arrangement whereby in such cases a claimant could, by proper diligence, obtain compensation from the Bank of England or some other British bank. Taking all these factors into consideration, I do not believe that an item in excess of \$100.00 could be allowed to the claimant for cash in her possession for reasonable travelling expenses. . . .

From the whole confused picture, I am inclined to the view that the articles lost by the claimant, including an allowance of \$100.00 for cash, would be slightly in excess of the amount assessed by the learned Deputy Commissioner. I would fix the total value of the property lost at \$1,000.00.

With this variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$1,000.00 as an award for loss of personal property at the sinking of the SS "*Athenia*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$603.00 received from the Government of the United Kingdom, with interest adjustment from 14th April 1948.

For the reasons mentioned by the learned Deputy Commissioner, and those set out above, the claim for personal injury should be disallowed, except as to the item of \$75.00 disbursements for medical service shortly after the sinking of the "*Athenia*". On this item, I recommend that the claimant be paid \$75.00 as an award for pecuniary loss resulting from personal injury sustained by the claimant at the sinking of the SS "*Athenia*", such payment to be in order of Priority No. (1-2), and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 2nd day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7744

Re: La Société des Missions-Étrangères

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified it, under the provisions of Rule of Procedure No. 20, that I found it necessary to revise downward the awards recommended by the learned Deputy Commissioner in the following particulars:

(a) By disallowing the claim for loss of, or damage to, immovable property at the five Missionary Stations where the learned Deputy Commissioner found some evidence to warrant the granting of an award. This would have the effect of reducing the award recommended for those five Stations from \$20,000.00 to approximately \$13,000.00 in respect of movable property alone.

(b) By disallowing the claim for loss of 22 wooden cases containing clothing, books and liturgical objects which arrived in Manchuria in 1940 and never came into the possession of the claimant.

(c) By disallowing at least that portion of the claim for loss of currency at the presbytery in Davao which relates to 10,000 pesos then recently withdrawn from the bank.

On review, the claimant has submitted somewhat elaborate arguments in support of the contention that the awards recommended by the Deputy Commissioner should be confirmed, and that awards should be granted in respect of those portions of the claim which were disallowed by the Deputy Commissioner.

The only additional evidence now produced in support of those arguments is a Canonic Commission emanating from the Holy See at Rome in July 1929 granting the claimant for the purpose of missionary activities a territory to be detached from the Apostolic Vicariates of Mukden and Jehol.

It is still apparent that there is no evidence of ownership of immovable property in the missionary areas concerned to warrant a finding that the claimant was the legal owner of the immovable property at the time of the alleged loss or damage. The allocation of territory for missionary work does not necessarily carry with it the granting of a legal title to the properties available

for use in connection with that work. Whatever may be the situation in Canon Law, the context of the War Claims Rules requires that a claimant, in order to qualify for an award for pecuniary loss for damage to property must establish himself as the legal owner of the property under Civil Law at the time of the loss or damage. In the present group of claims, there is no documentary or other objective evidence to establish that the claimant was the owner under Civil Law of the immovable properties concerned, a contention which is supported only by the declarations of members of the Order. The latter form of proof is invariably rejected by the Commission as being inadequate to establish legal title to immovable property.

As to the claim for loss of movable property, the evidence is also, the learned Deputy Commissioner points out, scanty, particularly with regard to the extent of the losses incurred. Even as regards the five missionary stations in respect to which the learned Deputy Commissioner recommended an award, there is no detailed inventory showing the nature and individual value of the various items of property alleged to have been lost, and the evidence is by no means conclusive as to the time and manner of the losses involved, or as to whether those losses occurred during World War II or after the termination of hostilities. Such evidence as has been presented is altogether circumstantial and mainly secondhand. I am, however, disposed to agree with the learned Deputy Commissioner that there is some evidence from which an inference may reasonably be drawn that the claimant did own a considerable amount of movable property at the five missionary stations in the Vicariate of Szepingkai, and that a considerable portion of such movable property was destroyed or looted by the Japanese, the Chinese, or the Russians, during the period of World War II, that is to say before the date of the armistice with Japan on 2nd September 1945.

In respect of the five missionary stations, the learned Deputy Commissioner recommends a lump sum award of \$20,000.00. He does not break this figure down into movable and immovable property, but I am inclined to the view that the award would include approximately \$7,000.00 for damage to the immovable property, and \$13,000.00 for loss of movables. In view of the scanty and inconclusive nature of the evidence, it appears to me that \$13,000.00 is more than generous compensation for the extent to which compensable losses have been established. For the reasons which I have mentioned, I consider that the recommendation for damage to immovable property must be reversed.

The same remarks apply to the absence of adequate evidence of legal title to the immovable property at the seven missionary stations situated in the vicinity of Ta Ing Tze. As to the movable property alleged to have been lost in that vicinity, the evidence is even more remote and secondhand than in the case of movable property at Szepingkai.

No direct evidence whatever is submitted to establish the identity, market value or date or circumstances of the alleged loss of the articles concerned. The only inference which may be drawn that a compensable loss was suffered within the period of World War II must be deduced from entirely indirect evidence and general circumstances. The total claim for loss of movable property in the Ta Ing Tze region amounts to \$13,800.00. In the absence of more adequate evidence as to identity, value, circumstances and date, of the losses incurred, I am prepared to infer that the claimant suffered a compensable loss in respect to movable property in that area amounting to \$3,500.00.

As to the claim for loss of 22 wooden cases in Manchuria, the evidence indicates that these goods arrived in that country in 1940 and never came into the possession of the claimant. The inescapable inference is that they were confiscated prior to the commencement of World War II, and I am therefore of the opinion that this branch of the claim must be disallowed.

As to the claim for 18,000 pesos alleged to have been stolen at the presbytery in Davao, that amount of currency is stated to have included 10,000 pesos then recently withdrawn from the bank. The Commission requires substantial corroboration of evidence adduced in claims for loss of currency, and it has appeared to me that there should be some corroboration of the withdrawal of the 10,000 pesos. It is, however, explained by the claimant that it is physically impossible to obtain corroboration owing to the fact that the Philippines National Bank of Davao was closed by the Japanese, and later replaced by another bank under the name of Tai Wan. It appears that the greater part of the documents and archives of the Philippines National Bank relating to the relevant period have disappeared and have never been recovered.

Unfortunately, however, the possession of 18,000 pesos is supported solely by the unsworn certificate of Abbe Conrad Cote, who was treasurer of the claimant Society at Davao at the outbreak of hostilities. Abbe Cote certifies that he had remaining in the Davao residence the sum of 18,000 Philippines pesos at the time the Japanese soldiers took over the presbytery. He does not, however, mention the withdrawal of 10,000 pesos from the Bank at Manila.

At the time of the hearing before the Deputy Commissioner, an adjournment was made to the following day to enable the giving of testimony by Abbe Cote, who appears to have been in Montreal at the time and who was alleged to be the person who made the withdrawal from the bank. On the following day, however, Abbe Cote did not appear but instead evidence was given by Rev. Joseph Geoffroy, who was Superior of the Davao mission at the outbreak of the war. He testified that he had instructed Abbe Cote to make a withdrawal from the bank in view of the probability that funds belonging to foreigners would be frozen. Although he gives indirect evidence of the making of a withdrawal, he states that he does not know exactly how much was withdrawn, and that the only thing which he could say is that there was in the treasury between 9,000 and 10,000 pesos. He also gives evidence to the fact that 2,000 pesos were distributed among the priests of the mission and carried on their persons when the Japanese arrived. He does not make it clear whether the 9,000 to 10,000 pesos were calculated after or before the distribution of the 2,000 pesos among the priests, nor does he attempt any explanation why the remaining funds were left available for pillage by the Japanese or others.

On the whole evidence respecting this item of the claims, I am still of the opinion that the maximum award which could reasonably be granted is the equivalent of 8,000 pesos, or \$4,400.00.

To summarize, it is with considerable hesitation that I recommend payment of the following residual items, which appear to me to be extremely generous in view of the paucity and inadequate nature of the proof submitted to establish the various branches of the claim:

- | | |
|---|-------------|
| (a) Loss of movable property in Szepingkai area: | \$13,000.00 |
| (b) Loss of movable property in Ta Ing Tze area: | 3,500.00 |
| (c) Loss of currency at Davao Presbytery: | 4,400.00 |
| (d) Loss of food supplies confiscated by the Japanese: .. | 1,500.00 |

With the foregoing variations, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$22,400.00 as an award for loss of property in the Far East, such payment to be in orders of Priority Nos. 3(a) to 5 inclusive and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 31st day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7756

Re: Bonin

This is one of a group of claims for compensation for maltreatment of members of the religious order known as La Société des Missions-Étrangères de la Province de Québec. The present claim concerns maltreatment only but, especially as some of the group are also claiming for personal injury, I consider it desirable to review at some length both the course of adjudication by the Commission, and the basic principles which underlie the decision which I have now reached.

The group of claims was originally referred by me to Deputy Commissioner Marion, who conducted hearings, on the basis of documentary evidence on file with the Commission, and submitted a report on 6th May 1955, recommending payment of a *per diem* award for maltreatment in each case.

From the materials then available to the Commission, it appeared that the place where the group of claimants had been interned, at Szepingkai in Manchuria, was officially recognized as a camp operated—that is, administered or effectively controlled—by the Japanese, and that therefore the provisions of the War Claims Rules rendered it unnecessary to inquire whether, or not, the claimants had been subjected to any specific incidents of maltreatment. I accordingly approved the report of the learned Deputy Commissioner so far as the maltreatment claims were concerned, and forwarded my recommendation of approval to the Honourable, the Secretary of State. From his Department the reports were duly forwarded to the Secretary of the Treasury Board for consideration by the Board.

Before a decision had been reached by the Treasury Board pursuant to paragraph 4(1) of the War Claims Regulations, further materials became available which cast doubt upon the previous inference that the place of internment of the claimants at Szepingkai was a camp operated, administered, or effectively controlled by the Japanese. The Treasury Board therefore returned this group of maltreatment claims to the Commission, with the request that the Board might have further advice on the propriety of payment of maltreatment awards.

I accordingly referred this group of cases back to Deputy Commissioner Marion to conduct oral hearings with a view to determining whether or not the so-called camps at Szepingkai fell within the provisions of the War Claims Rules which provided an automatic daily award for prisoners detained in camps directly operated by the Japanese, and, if not, whether specific incidents of maltreatment could be established which might entitle the claimants to lump sum awards in pursuance of the provisions of the Rules. The learned Deputy Commissioner submitted to me a memorandum, dated 28th October 1955, whereby he confirmed his original recommendation on the maltreatment claims, and found that both the "Seminary" and the "Bishop's House", in which this group of claimants had been successively detained at Szepingkai, were camps operated by the Japanese within the meaning of the War Claims Rules, and therefore a proper basis had been established for the granting of an automatic *per diem* award.

I then proceeded to review again the confirmed report of the Deputy Commissioner, in the light of the voluminous evidence taken by him at the re-hearings, and in the light of the additional materials which had been made available to the Commission. Pursuant to the provisions of Rule of Procedure No. 20, I notified Council for the claimants of my preliminary opinion to the effect:

(a) That, as to the period of internment spent in the Seminary, though I was not entirely convinced that the type of detention there experienced would

constitute the basis of an automatic award arising from the presumption of maltreatment established by the War Claims Rules, I was nevertheless prepared to accept the findings and opinion of the Deputy Commissioner on that point, and to approve his recommendation of an automatic *per diem* award of \$1.00 in relation to the period of detention in the Seminary;

But that

(b) as to the period of detention in the Bishop's Palace, I then felt bound to reverse the Deputy Commissioner's decision and to recommend disallowance of the portion of the award relating to that period of detention, both on the ground that the Bishop's Palace had not been established as a camp effectively controlled by the Japanese, and on the ground that no specific incidents of compensable maltreatment had been established by the claimants.

I invited the comments and submissions of the claimants on my proposed revision of the Deputy Commissioner's findings. Elaborate arguments were accordingly submitted in support of the contention that my preliminary opinion was in error, and that the recommendations of the Deputy Commissioner should be approved and confirmed.

I am reluctantly obliged at this point to comment that, though this group of claimants was represented by very eminent counsel, the claimants were not contented to make their submissions directly to the Commission, but resorted to very numerous indirect channels, including submissions to a large number of Members of Parliament, and an elaborate programme on television. To the credit of the Members of Parliament concerned, it must be mentioned that, though they transmitted the submissions to the Commission, they did so in each case without any attempt at exerting undue pressure or improper influence. Unfortunately, however, such a method of prosecuting claims inevitably results in embarrassment both for the Members of Parliament and for the Commission itself. Though the deliberations of the Commission are not strict judicial proceedings, and though the Commission would hesitate to claim the powers exercised by courts in cases of contempt, the work of the Commission is at least quasi-judicial in its character, and I regret that I feel it necessary to deprecate strongly any efforts which may be made by claimants or groups to bring indirect pressure to bear upon the deliberations of the Deputy Commissioners or of myself as Chief Commissioner.

The point of view mainly stressed by this group of claimants is that the Advisory Commission on War Claims recommended an automatic *per diem* award of \$1.00 for any period of internment of a claimant in a camp operated—that is, administered or effectively controlled—by the Japanese, and that this claimant and the other members of the group are accordingly entitled to such *per diem* award without proof of specific incidents of maltreatment.

In order to determine the validity of this contention by interpretation of the expression “a camp operated—that is administered or effectively controlled—by the Japanese”, it is necessary to examine the factual basis on which the Right Honourable Advisory Commissioner's recommendation was founded. From the preliminary information then available to the Advisory Commissioner, as well as from the judgment of the International Military Tribunal for the Far East, and other reports which had been brought to his attention, he inferred that “it can be considered with a fair approach to accuracy that all internees in camps operated by the Japanese were maltreated”, and that therefore “it would be a mistake to require the Commissioner to take evidence in every individual case of alleged maltreatment in the Japanese-administered camps of the Far East”. For periods of detention in Japanese-administered camps he therefore recommended an automatic *per diem* award, and his recommendation was incorporated into the War Claims Rules by Regulation

passed by Order of the Governor General in Council. The interpretation of the words "operated", "administered", and "effectively controlled" presents very substantial difficulties and, as I have indicated, requires an examination of the basis for Advisory Commissioner Ilsley's finding that practically all internees in Japanese-administered camps were maltreated.

He finds, in the first place, a general pattern of administration in such camps, both in the cases of prisoner of war camps and civilian internment camps, under the administration of "military commanders", who received their instructions through Imperial ordinances and regulations issued by the War Ministry. He finds also a common pattern of treatment accorded to those who were unfortunate enough to be detained in what he describes as Japanese-administered camps. This pattern of treatment may be illustrated by a series of quotations from the learned Advisory Commissioner's report:

"torture, murder, rape and other cruelties of the most inhumane and barbarous character" (p. 44).

"Ruthless killing of prisoners by shooting, decapitation, drowning, and other methods; death marches in which prisoners including the sick were forced to march long distances under conditions which not even well-conditioned troops could stand, many of those dropping out being shot or bayoneted by the guards; forced labor in tropical heat without protection from the sun; complete lack of housing and medical supplies in many cases resulting in thousands of deaths from disease; beatings and torture of all kinds to extract information or confessions or for minor offences; killing without trial; and even cannibalism." (p. 44).

"Among these tortures were the water treatment, burning electric shock, the knee spread, suspension, kneeling on sharp instruments and flogging." (p. 45).

"..... malnutrition still further reduced the ration and in some cases withdrew it entirely from those who were unable to labour because of illness or injury." (p. 45).

"Failure to afford adequate or any medical supplies contributed to the deaths of thousands of prisoners and internees." (p. 46).

"According to the reports of cruelty and inhumanity, it would be necessary to summon the representatives of all the demons available anywhere and combine their fiendishness with all that is bloody in order to describe the conduct of those who inflicted those unthinkable atrocities " (p. 47).

"No attempt to conform to civilized standards, either in the case of prisoners of war or civilians. Bad treatment of civilian internees in some areas was due to callous indifference." (p. 47).

"When expedient, prisoners were tortured to induce them to reveal information." (p. 48).

"The Japanese sited transit and permanent camps where they most needed labour and without any regard to the safety of the prisoners." (p. 48).

"Punishment for minor offences was out of all proportion and was carried out in the most arbitrary and barbarous manner. Attempted escape was almost always punished by death or by life-sentences." (p. 48).

"Callous indifference to the suffering of prisoners Face-slapping, beating over the head and the more brutal forms of punishment for infringement of regulations." (p. 48).

"In Borneo the treatment was especially brutal and the prisoners were half-starved slapped, beaten over the heads with sticks and punished in brutal and degrading ways. Work was compulsory the most menial tasks to humiliate them. Disobedience or attempted escape was punishable by death." (p. 48).

"'Death march'—of 3/4000 men a bare handful survived." (p. 48).

"Brutality, tortures and executions." (p. 48).

"Deliberate and barbarous brutality." (p. 48).

"In the Philippines, the treatment was in every respect consistently bad, and escapers were, if recaptured, put to death." (p. 49).

The foregoing citations serve to indicate the pattern of administration and treatment which the learned Advisory Commissioner had in mind when he concluded that substantially all internees in camps operated by the Japanese were maltreated. They also serve to establish clearly that the Advisory Commissioner did not consider all places where civilians were interned by the Japanese as being Japanese-operated camps.

A careful study of the evidence submitted in the present group of cases fails to disclose any serious degree of maltreatment such as would conform to the pattern outlined by the Advisory Commissioner in his description of camps administered or controlled by the Japanese. In fact, there does not appear to be any evidence of what would be compensable maltreatment under the War Claims Rules.

It remains to be considered whether, from the purely technical point of view the place of internment at Szepingkai may be considered to fall within the category of Japanese-operated camps.

The learned Advisory Commissioner repeatedly emphasizes the principle that internment *per se* is not compensable. "Internment is, of course, a great inconvenience, and has an upsetting effect on the lives of those interned, but the effect is of the kind flowing to large classes of Canadians in enemy or enemy-occupied countries from the war itself. In many instances the lot of these interned was better than that of those left at large." (p. 40). He also lays it down that not every departure from the Geneva Convention, or similar International arrangement, constitutes maltreatment. Compensable maltreatment is the result of a marked departure from humane treatment, such as there would be a consensus among civilized peoples that it constitutes maltreatment.

He goes on to draw an emphatic distinction between "enforced residence under enemy supervision, such as the so-called "house arrest cases", and internment in camps which were "in substance and effect under the control of the Japanese" or which were "operated, openly or in effect, by the Japanese". (p. 41). At p. 49, he refers to the latter type of camps as "while operated by the Japanese", or as "Japanese-operated camps... while operated... by the Japanese". At p. 50, he refers to such camps as being "operated... that is administered or effectively controlled... by the Japanese".

As to the expression "camp"—the frequent repetition, in the evidence before the Deputy Commissioner, in the arguments, and in the telecast to which I have referred, of the assertion that the places of internment at Szepingkai were "camps" or "concentration camps" is not helpful, as it merely begs the question without providing any satisfactory definition. In Germany and German-occupied countries, the expression "concentration camp" came to have a technical and extremely sinister meaning. I cannot, however, find that such a meaning was applied to the expression "concentration camp" in the Far East, if indeed such expression was in common use there. My opinion is, therefore, that "camp" or "concentration camp" in the present context is used in its ordinary common meaning, namely a place of detention for civilian internees.

Since internment *per se* is not compensable, it is obviously neither helpful nor sufficient to assert that the places of internment in the Seminary and the Bishop's Palace were camps, or even concentration camps. What the claimants must establish is that these camps or places were "openly operated", or "administered", or "effectively controlled" by the Japanese. It is obvious that the expression "controlled" is not to be given its broadest interpretation in this context. Since it was legally permissible for the Japanese to intern civilians of Canadian nationality; and since house arrest, or enforced residence under enemy supervision, is not regarded under the War Claims Rules as internment in Japanese-operated camps; the Rules clearly contemplate a distinction

between "under enemy supervision" and "effectively controlled by the Japanese". In the course of supervision of enforced residence, some measure of control is inevitably required, and it is therefore evident that the measure of control contemplated by the learned Advisory Commissioner as constituting a Japanese-operated camp must go beyond such control as is reasonably necessary for the supervision of enforced residence.

With particular reference to the period of internment at the Bishop's Palace at Szepingkai, the camp rules appear to have been stipulated, or at least communicated, to the internees through Bishop Lapierre, who, though not himself interned, continued to live with the internees, and continued to exercise a considerable responsibility in seeing that the regulations were carried out. The internees were provided by the Japanese Government with a fixed monthly cash allowance, out of which they purchased food on a ration basis, fuel, electricity, and other necessities. Obviously the rations which they were able to obtain were not adequate or satisfactory, but they appear to have been similar to those which were available to the civilian population, or to those which would have been available to the claimants if they had not been interned. It also appears from the evidence, and from the telecast to which I have referred, that the internees were able to obtain credit or loans from a number of Christian Chinese in the vicinity, and that they were so enabled to supplement their rations by purchases of food on the black market. Materials recently submitted to the Commission indicate that the claimants had facilities for operating a vegetable garden on the compound premises and that they were able to raise a large number of rabbits.

The food was prepared for the internees by the members of an Order of Sisters who resided in a neighbouring building, with the assistance of Chinese servants, who also served the meals.

The internees had apparently ample opportunities to engage in outdoor sports within the compound, and to engage in reading, devotional exercises, amateur theatrical productions, and other forms of recreation within the building.

It is apparent that the winter temperature of the Bishop's Palace was unduly cold, owing to the poor quality of fuel which the internees were able to purchase. There is also evidence that there was no medical assistance available on the premises, and that permits to secure medical and dental services was attended with considerable formalities and delays.

Communications with the outside world were slow, and mail from home and Red Cross parcels were practically non-existent.

On the whole, however, there seems to have been very little direct interference with, or control over, the every-day life of the internees, and it is exceedingly difficult to distinguish between conditions prevailing at the Bishop's Palace and the conditions regarded by the War Claims Rules as being permissible under the heading "forced residence under enemy supervision".

In fact, the only evidence which I am able to find that would justify regarding the Bishop's Palace as a camp operated or effectively controlled by the Japanese is the presence of two Japanese guards and one Chinese guard-interpreter, who resided constantly with the group of 58 internees housed in the building. The guards ate with the internees, and are alleged to have intimidated the Chinese servants with the result that they obtained the better helpings of meat and vegetables. It is also stated that other Japanese visitors frequently appeared at the "camp" and ate with the internees, thus reducing the rations available for the latter. It is difficult to understand why those "visitors" would choose to eat at the table of the internees unless the rations there served were better than those procurable outside.

The guards wore some kind of uniform, and were said by some of the witnesses to have been soldiers. In other portions of the evidence they are referred to as policemen. The continuous presence of the guards and interpreter, though no doubt primarily directed towards supervising the enforced residence of the internees, does appear to have gone slightly beyond that function and to have constituted some small measure of "effective control" through the enforcement of regulations.

The War Claims Rules require the drawing of a distinction between "enforced residence under enemy supervision", which is not automatically compensable, and detention in a "camp operated—that is administered or effectively controlled—by the Japanese", which gives rise to an automatic *per diem* award. With very considerable hesitation I have finally arrived at the conclusion that the continuous presence of, and the regulation exercised by, the police guards maintained in the Bishop's Palace, constituted that place a camp administered or effectively controlled by the Japanese.

For that reason, and that reason alone, I approve the re-affirmed decision of the Deputy Commissioner on the maltreatment claim respecting the period of internment in the Bishop's Palace.

During the period when the claimants were interned in the "Seminary", Japanese control was obviously more far-reaching and effective. The number of guards was then approximately 15; and the food and other necessities were controlled and dispensed by the Japanese, the food being partly supplied out of reserves seized from the Society of the Missions Étrangères. I have therefore less difficulty in arriving at the opinion that Seminary was a Japanese-operated camp.

In this specific case, I therefore recommend that the claimant, Reverend Antonio Bonin, be paid \$1,342.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 8th day of February, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7760

Re: Coté

Deputy Commissioner Marion has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's reports and, on review, has presented a somewhat elaborate argument in support of the contention that the disallowance of his claims for maltreatment and personal injury should be reversed, and awards granted on those branches of the claim.

This is one of a group of claims presented by members of a Religious Order known as La Société des missions-Étrangères de Québec, who were in the Philippines during World War II. The general picture disclosed by the evidence is that the claimants were arrested by the Japanese in July 1942. After being subjected to interrogation, they were detained for three days in a small hospital, which served as a place of internment for the time being, and then they were returned to Caraga, where they were kept in a species of house arrest in their own presbytery. This period of house arrest in the presbytery and elsewhere continued until 3rd January, 1943, when the Japanese garrison in the locality was killed or ousted by a group of Philippine Guerillas. On the

orders of the Guerilla force, the claimants were evacuated to the mountains, where they remained in contact with the Guerillas until the cessation of hostilities. In the case of the present claimant, the evidence indicates that he joined the United States Forces as a Chaplain in November 1944.

The claimant objects particularly to the fact that the learned Deputy Commissioner followed the decision of Deputy Commissioner Choquette in *Case No. 2444—Reverend Father Alfred Tremblay*. The claimant stresses the fact that Father Tremblay was not represented by counsel at his hearing, and that his evidence was therefore incomplete as regards the material points of fact involved. Admitting the possible weakness of presentation in Father Tremblay's case, I must point out that it is only one of very numerous cases in which the Commission has disallowed claims advanced in analogous circumstances.

The claimant also objects to the finding made by Deputy Commissioner Choquette in the Tremblay case, and followed by Deputy Commissioner Marion in the present case, to the effect that the claimant was not a member of the Guerilla forces. In my opinion, that finding is merely incidental to the material facts of the case, and I do not consider it to be important whether the claimant was officially or informally a member of the Guerilla forces, or not.

Maltreatment awards are available only in cases where claimants have been seriously ill-treated during internment, by their enemy captors, either through wilful conduct or culpable neglect. In the present group of cases there is no evidence that the claimants were either interned in a camp operated or effectively controlled by the Japanese (in which case maltreatment would be presumed), or that they were culpably mistreated while under house arrest. International Law permits a belligerent power to intern enemy aliens in time of war, and the War Claims Rules therefore do not permit the granting of compensation for internment as such. I therefore see no alternative but to confirm the decision of the learned Deputy Commissioner to the effect that the maltreatment claim must be disallowed.

The claimant also contends that he is entitled to an award for personal injury, or impairment of his health, resulting from operations of war while he was attached to the Guerilla forces. I am unable to agree with this contention. So far as the ill effects of any hardships which the claimant underwent whilst a Chaplain in the United States Forces are concerned, his recourse (if any) would be to the United States authorities, and not to the Canadian War Claims Fund. The same would probably be true regarding any personal injury sustained by the claimant during a period when he was an official member of the Philippine Guerilla forces.

It is entirely beyond question that the claimant and his associates suffered extremely great privations and hardships during the period when they were hiding in the mountains in association with, or by orders of, the Philippine Guerillas. Those hardships, however, were obviously occasioned by the existence of a state of war, and were not the direct result of the carrying on of actual warfare by belligerent armed forces.

The Commission has in all cases declined to recommend compensation for maltreatment, death or personal injury alleged to have been sustained by claimants whilst they were actively or passively associated with Underground, Resistance, or Guerilla groups. The only allowable exception would arise in the case of death or personal injury directly caused by an operation of war in such circumstances. Except in cases of persons in the custody of an enemy captor, the Commission has been unable to consider undue physical exertion, scarcity of food and clothing, exposure to the elements and to disease, or other such forms of exposure and privations, as being the direct consequence of operations of war. They rather result, as I have indicated, from the existence of a state of war in the locality concerned.

After considering this group of cases carefully from every angle, I am driven to the conclusion that I have no alternative but to approve the findings of the learned Deputy Commissioner to the effect that the claimants were not maltreated within the intention of the War Claims Rules, and that their personal injuries did not directly result from operations of war.

As to the claim for loss of property, I approve the report of the Deputy Commissioner without variation. I am advised that the claimant was not qualified to apply for compensation from the Philippine War Damage Commission. It is indicated that the claimant received \$200.00 from his Religious Order, but this amount seems to me to have been in the nature of an advance, rather than compensation otherwise provided for. I am therefore of the opinion that the payment should be disregarded.

I accordingly recommend that the claimant be paid \$800.00 as an award for loss of property in the Philippines, such payment to be in order of Priority No. 3(a), and to bear simple interest from 1st January 1946 at 3% per annum.

I recommend that the claims for maltreatment and personal injury be disallowed.

Dated this 3rd day of June, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7781

Re: Hétu

...As to the claim for loss of property, I have notified the claimant, pursuant to the provisions of Rule of Procedure No. 20, that I considered it necessary to revise downward the award recommended by the learned Deputy Commissioner by deduction of approximately \$45.00, representing the estimated market value of three cameras. The cameras in question were seized by the Japanese approximately three months before the outbreak of World War II, and their loss is therefore obviously not compensable under the War Claims Rules....

Dated this 28th day of May, A.D., 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7789

Re: La Société des missions-Étrangères (Lambert)

Deputy Commissioner Marion has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's reports.

On review, the claimant has acquiesced in the disallowance of the claims for maltreatment.

I have, in any case, no alternative but to approve the Deputy Commissioner's disallowance of this branch of the claims.

An award under this heading is regarded by the War Claims Rules as being in the nature of a solatium and as being of a highly personal nature with reference to the person maltreated. If the latter dies before receiving an award,

his award survives for the benefit of his personal dependents, but not for the benefit of his estate or of any person or corporation outside the restricted list of dependents enumerated in the report of the Right Honourable Advisory Commissioner. For those reasons, it is not possible to recommend the granting of a maltreatment award to the Religious Order of which the late Fathers were members, even though it may be successfully contended that the Order stood *in loco parentis* to the members concerned. I have therefore no alternative, under the provisions of the War Claims Rules, but to approve the recommendation of the Deputy Commissioner. (See *Case No. 6766* concerning the death of Sister Marie Catherine Agnes. See also *Case No. 9309* concerning the death of Rev. Leon Didase Arcand. See also *Case No. 9308* concerning the death of Rev. Adelard (Olive) Berthold).

The claimant expresses general agreement with the Deputy Commissioner's recommendation for awards for loss of property, providing that the amounts of such awards correspond with the amounts claimed in the respective cases. The claimant's mandated representative states that "we do not find in the text of the report of the Deputy Commissioner, which was forwarded to our attention, any indication of the amounts so granted. We suppose that they agree with the amounts claimed, namely \$1,694.00 for loss of the personal effects of Reverend Quenneville, and \$2,050.00 for loss of the personal effects of Reverend Lambert."

I am at a loss to understand how the mandated representative came to overlook the amounts actually recommended by the learned Deputy Commissioner. The Deputy Commissioner's reports clearly indicate that he recommends an award of \$1,300.00 for goods lost by the late Reverend Quenneville, and \$1,000.00 for goods lost by the late Reverend Lambert. I have carefully reviewed this aspect of each case, and I am of the opinion that the respective awards recommended by the learned Deputy Commissioner fully represent the established compensable value of the goods lost. As a matter of fact, I am of the opinion that the awards recommended are generous in the circumstances. It must be remembered that the War Claims Rules prescribe reasonable market value at 30th June 1941 as the criterion of compensable value for goods lost by operations of war.

As to the claims for compensation for death and personal injury, the claimant submits an elaborate argument in support of the contention that awards should be granted on these branches of the claims. The claimant's contention in this respect may be summarized in the words of the mandated representative: "Conditions of detention at Szepingkai involved very severe maltreatment, to wit, principally deprivation of sufficient nourishment and of adequate medications, imposed altogether deliberately and without defensible reasons, by the Japanese."

The War Claims Rules prescribe that in the case of claims for personal injury and death, the onus of proving the claims rests on the claimants themselves, and the claims must be established in substantially the same manner as similar claims in courts of civil law. The Rules went on to prescribe that a presumption of maltreatment should automatically be given effect in all cases where claimants were interned in camps operated or effectively controlled by the Japanese. That presumption, however, was available only for the purpose of enabling the Commission to recommend *per diem* awards without hearing detailed evidence respecting the actual conditions prevailing in the individual camps concerned.

No such presumption is available for the purpose of founding a claim for personal injury or for death but the claimant in such a case must establish not only that actual maltreatment occurred but that the actual maltreatment was the cause of the subsequent illness or death, and of resulting pecuniary loss.

The Commission has made a very careful and detailed examination of conditions prevailing in the places of detention at Szeping kai, and has conducted prolonged oral hearings to assist in the assessment of such conditions. While, with some hesitation, I concluded that there was some measure of effective control by the Japanese of those detained at Szeping kai, I also concluded that there was no evidence to support an inference that there was in those places of detention any prevalent maltreatment within the meaning of the War Claims Rules. (See Case No. 7756—*Rev. Antonio Bonin*). For that reason, it cannot be considered that actual maltreatment at Szeping kai has been established by the general evidence, and there is no evidence to warrant an inference that either Reverend Quenneville or Reverend Lambert was subjected to individual maltreatment during detention there. I am accordingly constrained to agree with the findings of the learned Deputy Commissioner that “under the circumstances I am unable to determine if the death of Father Quenneville was in any way connected with his stage of internment”; and “on the strength of the evidence tendered in this case, I am unable to link Father Lambert’s death with any maltreatment as such he may have undergone at the hands of the Japanese”.

Having reviewed the Deputy Commissioner’s reports, I approve them without variation.

I accordingly recommend that the claimant, La Société des missions-Étrangères de la Province de Québec, be paid the following amounts as awards for loss of property in Manchuria, each payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum:

- (a) for goods in possession of Reverend Arthur Quenneville: \$1,300.00;
- (b) for goods in possession of Reverend Gerard Lambert: 1,000.00.

I recommend that the claims for maltreatment, personal injury, and death, be disallowed.

Dated this 30th day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: This Recommendation applies to Case No. 7806 (*Quenneville*) as well as Case No. 7789.

CASE No. 7797

Re: La Société des missions-Étrangères (Massé)

Deputy Commissioner Marion has submitted to me his findings and recommendations, with his reasons therefor. The learned Deputy Commissioner recommends an award of \$2,000 to compensate the claimant Order for alleged pecuniary loss consequent on the death of Mgr. Massé, and an award of \$3,000 to compensate for loss of personal property in the possession of the late Monsignor.

I have entertained considerable doubt as to whether the death of the late Mgr. Massé is compensable under the War Claims Rules as having resulted from actual maltreatment by the Japanese, or whether the lack of prompt medical care, medicines, and attention were due to conditions arising out of the existence of a state of war. With some hesitation, I am prepared to accept the opinion that, in view of the serious illness of the deceased, there is some evidence that the Japanese were culpably remiss in the making of arrangements for medical attention, and perhaps also arrangements for securing adequate medicine and nursing. I therefore communicated to the claimant my disposition

to accept the findings of the learned Deputy Commissioner and to approve his recommendation for a death award of \$2,000.

The claimant has presented an elaborate argument in support of the contention that the recommended award should be increased to \$32,400, based on the prospective earnings of the deceased over the period of his expectation of life at \$1,200 per year.

The Commission is unable to accept this contention as a basis of compensation under the War Claims Rules. In the case of the death of a husband or father as breadwinner of a household, the presumption usually is that his earnings are irreplaceable from the point of view of the support of his wife (except in the case of her remarriage) and family. In the case of the death of a missionary, there is no such presumption, but on the contrary it is arguable that a religious organization does not suffer any strictly pecuniary loss by the death of a member of its missionary personnel. In dealing with such cases, the Commission has gone so far as to concede that the death of a missionary does involve some moderate pecuniary loss to the extent of the cost of specialized training of another missionary to take the place of the deceased. That principle has been applied by the learned Deputy Commissioner in the present case, and in my opinion it is as far as the Commission can go in assigning a strictly pecuniary loss to the death of a missionary member of the Order.

I therefore approve the Deputy Commissioner's recommendation on the death claim without variation.

As to the claim for loss of property, I have notified the claimant, pursuant to the provisions of Rule of Procedure No. 20, that I considered it necessary to reduce the recommended award to \$1,000, owing to uncertainty of the market value of the goods lost, and of the circumstances under which the loss occurred. I was then under the impression that the goods in question had been looted by the Russians in the short period during which they were operating in Manchuria during World War II. The claimant now draws to my attention the evidence to the effect that the goods had been originally sequestered by Japanese soldiers at the beginning of the war in 1941, and had been later given up to the Russian soldiers on the arrival of the latter in August 1945. The claimant also stresses the contention that, although works on mystic and ascetic theology would normally have little interest for pillaging Russian soldiers, it is natural to suppose that they would be used for fuel in view of the extreme scarcity of wood and other combustible material in the region where the library was situated. Whatever may be the value of the last mentioned argument, I am to some extent impressed by the fact that the lost property was apparently seized by the Japanese in the early days of the war and was not returned to the claimants. I am, however, still of the opinion that the award recommended by the learned Deputy Commissioner is in excess of the actual market value of the goods at 30 June 1941, even without considering any subsequent depreciation. As a result of all the foregoing points of view, I am now prepared to estimate the compensable property loss at \$2,000, and I approve the Deputy Commissioner's report with that variation.

As to the claim for maltreatment, an award under this heading is regarded by the War Claims Rules as being in the nature of a solatium and as being of a highly personal nature with reference to the person maltreated. If the latter dies before receiving an award, his award survives for the benefit of his personal dependents, but not for the benefit of his estate or of any person or corporation outside the restricted list of dependents enumerated in the report of the Right Honourable Advisory Commissioner. For these reasons, it is not possible to recommend the granting of a maltreatment award to the religious Order of which the late Father was a member, even though it may be successfully contended that the Order stood *in loco parentis* to the member

concerned. I have therefore no alternative, under the provisions of the War Claims Rules, but to approve the recommendation of the Deputy Commissioner for disallowance. (See *Case No. 9309* concerning the death of Rev. Leon Didace Arcand).

I accordingly recommend that the claimant be paid:

- (a) \$2,000 as an award for pecuniary loss resulting from the death of the late Mgr. Emilien Massé, such payment to be in order of Priority No. (1-2) and to bear simple interest at 3% per annum from 1st January 1946;
- (b) \$2,000 as an award for loss of property in possession of the late Mgr. Massé in Manchuria, such payment to be in order of Priority No. 3(a) and to bear simple interest at 3% per annum from 1st January 1946.

I recommend that the claim for maltreatment be disallowed.

Dated this 29th day of May, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 7806

Re: Quenneville

NOTE: See CASE No. 7789

CASE No. 7810

Re: Sarrazin

This application was heard in Montreal on the 18th of June, 1955, in the presence of Reverend Gérard Campagna, p.m.é., General Secretary of La Société des missions Étrangères de Québec, their counsel Mr. Ronald Halpin, Q.C. and Mr. J. P. Houle of counsel for the Commission.

The applicant, a Canadian at all relevant times, was a missionary in Japan where he owned property which he valued at \$650.00 and which was destroyed during bombardments in or in the vicinity of Tokyo. The property consisted of books and office furniture. Considering the use already made of these articles, I assess the loss of this claimant, who happened to be in Canada at the time, at \$550.00.

The claimant in this case would apparently have been eligible to recover at least a substantial portion of his loss from the Government of Japan. In cases where the amount involved is small, the Commission has taken the view that the expense which would be necessarily incurred in the establishment of such an alternative claim would outweigh the compensation, if any, to be derived from such a source. The limit of claims which the Commission considers it proper to exempt from deduction of satisfaction deemed to have been received from such alternative sources for the above reason is \$200. It would therefore seem equitable in this case to allow the claimant an exemption from deduction up to \$200 to cover the contingencies of recovery from the alternative source and the probable expenses of such recovery, if any. I would therefore recommend the deduction of \$350.00 as partial satisfaction deemed to have been received from the Government of Japan.

I therefore recommend that the claimant be paid \$550.00 as an award for loss of property in Japan with interest from January 1st, 1946, at 3% per annum, subject to deduction of \$350.00 deemed to have been received from the Government of Japan with interest adjustment from 28th October, 1953.

September 30, 1955.

(Sgd) C. W. A. MARION
Deputy War Claims Commissioner

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has presented the contention that there should not be deducted any amount to represent an award deemed to have been received from the Government of Japan pursuant to the Treaty of Peace with that country.

I am unable to agree with the substance of that contention.

The War Claims Rules require the Commission to deduct, as "satisfaction otherwise provided for", any compensation which a claimant might, by the exercise of reasonable diligence, have secured from some alternative source. In every case where an alternative source of compensation was available from the government of the country where the loss occurred, the Commission has invariably interpreted the War Claims Rules as implying the imposition upon the claimant of the burden of at least making some reasonable inquiry regarding the availability of such alternative compensation. Apart from the general notoriety of compensation under the Japanese Treaty, the slightest inquiry, directed either to the Government of Canada or to the Government of Japan, would have brought to the claimant the necessary information regarding the available Japanese award. There is, however, in the present case no evidence that the claimant ever made a single inquiry, or took any other step to seek alternative compensation or to ascertain its availability.

I have therefore no alternative but to conclude that the claimant by reason of his own neglect or default has failed to receive or has forfeited or lost his eligibility to receive payment from another source. The War Claims Rules accordingly oblige me to "deem" that the claimant has received such award under the Japanese Treaty as he might have received by the exercise of reasonable diligence.

The Commission's experience is that compensation awarded under the Treaty of Peace with Japan, being based on replacement value as of 1954 or thereabout, is usually more than adequate to include the June 1941 market value prescribed by the War Claims Rules as the basis of compensation, as well as interest in the interval. The Commission has nevertheless recognized that certain contingencies, expenses, and other difficulties might militate against a claimant's securing full compensation under the Japanese Treaty for loss of movable property, especially when it is in the nature of personal effects. The Commission considers that a capital margin of \$200.00 is the limit to which such contingencies and expenses could be given effect. That is the basis on which the learned Deputy Commissioner computed his estimate of the net compensable loss. Though the proof of the actual quantum of loss in the present case is not so cogent as might be desired, I am disposed to accept the Deputy Commissioner's estimate. I therefore approve his report without variation, except that I would postpone the presumed date of availability of the Japanese award to 1st January 1956.

I therefore recommend that the claimant be paid \$550.00 as an award for loss of property in Japan, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$350.00 deemed to have been received under the Treaty of Peace with Japan, with interest adjustment from 1st January 1956.

Dated this 13th day of June, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8406

Re: Crowe

This is a claim by the mother of the late Ivan Lee Crowe, a Private in the North Nova Scotia Highlanders, for compensation for maltreatment of the late serviceman as a prisoner of war in Europe. The evidence indicates that this soldier was captured on 7th June, 1944 and was unlawfully put to death by his German captors on the same day.

The claim raises a very difficult and important question as to whether, or not, the War Claims Rules intended to provide for maltreatment awards in such circumstances.

The same question came up for consideration in *Case No. 9358—Re: Arthur J. Orford*. In that case the report of the Chief War Claims Commissioner came before the Treasury Board for consideration. After a very careful and prolonged deliberation of the question, the Treasury Board reached the conclusion that the Rules did not intend to provide payment of maltreatment awarded in circumstances such as were disclosed in that case.

As the same question is involved in the present case, I have no alternative but to recommend that this claim be disallowed.

Dated this 20th day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8456

Re: West

... There is, however, evidence that this claimant was subjected to extremely severe undernourishment and privations. This caused considerable loss of weight and aggravated his condition of pulmonary tuberculosis.

Though a maltreatment award cannot be directed towards providing pecuniary compensation, or towards supplementing a pension granted for that purpose, the claimant's post-discharge health is valuable evidence as to the severity of the privations which he underwent as a prisoner of war....

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8462

Re: Lever Brothers Limited

... The letters, documents and other exhibits on file satisfy me that:

- (1) The complainants purchased, and paid \$49,393.63 for the cocoanut oil in question; that they were the owners of same; and that it was lost because of war action on the part of the Japanese; and
- (2) The amount of the loss is the price paid for the oil, but not for an anticipated profit, had it reached its destination; and
- (3) Every reasonable effort was made to obtain compensation from Hong Kong without success.

With regard to the loss of kapokseed oil in Batavia, I find that:

- (1) This oil was purchased and paid for by the claimant, and that the same was lost because of a necessary act of war on the part of one of the Allies; the amount paid for this oil was \$26,343.04; and all reasonable efforts were made to collect compensation from the authorities in Indonesia, without success.

There is the further claim for \$2,993.07 for legal expenses. This expense was not incurred for the purpose of establishing the claim or for services abroad, but rather for costs incurred in a dispute between claimants and shipowners for return of freight charges and not compensable under the Rules (see item 30, page 69 of Advisory Report).

An action for return of the freight which was included in the cost was taken against the United States Government, and \$7063 was received by the Company. Also \$1000 from the New York Insurance Company as a compromise settlement of a claim against the Insurance Company, a total of \$8063, which must be deducted from the claim for loss of coconut oil...

... Claim for increased value of oil as in Vancouver should be disallowed...

September 7, 1955.

(Sgd) J. D. HYNDMAN

Deputy War Claims Commissioner

NOTE:—Awards confirmed by Chief War Claims Commissioner 24 October, 1955.

CASE No. 8482

Re: Massie

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

It is established that this claimant was struck by a low-flying German aircraft from a neighbouring training centre, in the course of a mock "shoot-up". The aircraft came so low as to force the prisoners to throw themselves flat on the ground. It appears that one prisoner was killed, and the claimant struck by the tail end of the aircraft, and suffered multiple fractures of his right ankle. His ankle was placed in a cast for 25 days and in a wire cage cast for 20 days. The claimant further alleges that medical treatment given to him was improper, and that as a result he suffers permanent disability, in spite of many treatments subsequent to his liberation. It is further established by a specialist's report that there was mal-union of the original fracture, but it is extremely difficult to infer with any certainty that this was caused by culpable neglect on the part of the German medical authorities. The fact of the two successive types of casts would appear to indicate that a reasonable attempt was made to correct the injury caused by the claimant's accident.

The original injury was, of course, entirely unjustifiable. Though a maltreatment award cannot be directed towards providing pecuniary compensation, or towards supplementing a pension granted for that purpose, I would recommend a nominal additional award of \$300.00 as a solatium for the pain and suffering to which this claimant was improperly subjected. From this will be deducted \$60.20, representing the benefit which the claimant has already received from the application of the normal minimum of \$200.00. This will result in a total recommended award of \$439.80.

With this variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid \$439.80 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 15th day of December, A.D. 1954.

(Sgd) THANE A. CAMPBELL

Chief War Claims Commissioner

CASE No. 8543

Re: Goupil

This is the claim of D.62734 Private Antonio Gilbert Goupil, Fusiliers Mont Royal, for compensation for maltreatment while a prisoner of war in Europe.

On his statement of claim the claimant declares that he was captured at St. Andre sur Orne on August 17, 1944. From St. Andre he was taken to Falaise and from Falaise to Marseilles, where he arrived on August 19. From Marseilles he was taken by box-car to Belgium (he does not state to what place in Belgium) where he arrived on August 24, and was placed in prison. In September he took part in a forced march across Belgium to near the frontier of Holland. Here he was placed in a house from which he was liberated by a British regiment on October 15, 1944. "The British told us", he declares, "you are free".

The truth of the matter is that the above statement is a pure fabrication from beginning to end. I have the claimant's service record before me, and from this I observe that he was brought before a Field General Court Martial on November 11, 1944, charged with "in that he, in the field, at about 2359 hrs. on the 14th of Aug. 44 after an attack on La Commanderie, France, absented himself without leave until he surrendered himself to the Cdn. Provost Corps in Paris at about 1620 hrs on the 20 Oct. 44. Absent: 66 days, 16 hrs, 21 mins". The claimant pleaded guilty to the charge, was found guilty, and was sentenced by the Court to be imprisoned with hard labour for two years and to be discharged from His Majesty's Service.

The period during which the claimant absented himself without leave (August 14th to October 20th, 1944) synchronizes reasonably well with the period during which he claims to have been a prisoner of war (August 17th to October 15th 1944). According to his statement, as it appears on the record, he and a comrade were on patrol duty and returned to find that their regiment had gone. They set off next day to rejoin their regiment but did not succeed in doing so, and eventually made their way from St. Andre to Paris, where the claimant remained until he gave himself up to the Canadian Provost Corps on October 20th. He was never a prisoner of war at any time, and his claim for compensation for maltreatment while a prisoner of war is purely fictitious and, as I have already observed, a fabrication from beginning to end. It will therefore be disallowed.

This is the first case, of which I am aware, in which a claimant has deliberately and falsely made a claim with a view to obtaining an award of compensation from the War Claims Fund for which he is not eligible. The statement of claim made by the claimant is in the form of a statutory declaration made by him at Toronto on March 29, 1954, and he thereby appears to have made himself liable to prosecution on a charge of perjury. I would direct particular attention to this aspect of the matter in order that consideration may be given to determining whether, in the circumstances, a prosecution would not be advisable.

January 17, 1955.

JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner.

NOTE: Disallowance approved by Chief War Claims Commissioner.

CASE No. 8570

Re: Anderson

...There is, however, evidence that in addition to the incidents mentioned by the Deputy Commissioner Marion, this claimant was subjected to forced hard labour in a stone quarry, on a railway working party, and a farm working party.

On recapture after an escape, he was struck between the shoulder blades with a pistol wielded by a Gestapo agent, which caused a four inch wound and necessitated three weeks' hospitalisation. He was subjected to a total of 197 days' solitary confinement for escapes and sabotage. This punishment may have been in part justifiable, but during those occasions, as well as on the work parties in stone quarry and on railway, rations were reduced so near to a starvation diet, and beatings from guards were so severe, that on three occasions the claimant had to be hospitalised.

I would recommend a nominal additional award of \$100.00...

Dated this 23rd day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8666

Re: Vidal

This is a claim for maltreatment of the above named claimant while a prisoner of war in Europe.

Owing to the fact that hospitalization was provided for the claimant during substantially the whole period of his detention, I hold that the general presumption of the fact of serious maltreatment recognized by the Report of the Chief War Claims Commissioner has been rebutted.

In the circumstances I must find that maltreatment has not been established and I recommend that the claim be disallowed.

Dated this 2nd day of May A.D. 1955.

(Sgd) C. W. A. MARION
Deputy War Claims Commissioner

NOTE: Disallowance confirmed by Chief War Claims Commissioner, 2 June 1955.

CASE No. 8675

Re: Copes

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The additional materials furnished make it clear that the claimant was interned in the hands of the SS for a former period of 14 days, before the period mentioned by the Deputy Commissioner. It also now seems clear that the claimant had suffered some impairment of his ability to work for some time after his liberation. He states that, though his height was over six feet, his weight was reduced to 100 pounds, his eyesight and circulation were impaired, and for some time he was unable to perform any physical labour or even to walk fast. The evidence indicates that this condition, which lasted about a year

after his liberation, was the result of forced hard labour, with long hours, and inadequate rations and shelter. He was also kicked and struck on several occasions at Ommen concentration camp. In all the circumstances, it would now appear that the claimant would be entitled to a maltreatment award under the Sumner Test. In several previous reports, I have expressed the opinion that the normal maximum of \$1.00 per day should not be applicable to awards of \$200.00 or less, and this seems to me to be a case in which the claimant is entitled to the normal minimum award of \$200.00.

With the foregoing variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid \$200.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 28th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8746

Re: Walker

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I find, however, evidence available since the hearing by the learned Deputy Commissioner, to the effect that the claimant has been awarded a pension for pulmonary tuberculosis regarded as having been incurred during the claimant's service in the Air Force. The inference seems inescapable that this condition was either caused or aggravated by the privations to which the claimant was improperly subjected during his period of custody as a prisoner of war.

Though a maltreatment award cannot be directed towards providing pecuniary compensation, or towards supplementing a pension granted for that purpose, the claimant's post-discharge health is valuable evidence as to the severity of the privations which he underwent as a prisoner of war.

In the context of the claimant's unusually long (1782 days) period of custody, I would recommend a nominal additional award of \$200.00.

With this variation, I approve the Deputy Commissioner's report, and I recommend that the claimant be paid \$702.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 27th day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8762

Re: Brown

Deputy Commissioner Hyndman has submitted to me his findings and recommendations, as expressed in his reports dated 23rd January 1958 and 22nd April 1958.

The claimant has been furnished with a copy of the Deputy Commissioner's reports, and has waived presentation of further materials on review....

... Though the proof respecting the ownership, identity and value of some of the goods concerned is not as complete or satisfactory as might be desired, I agree with the learned Deputy Commissioner that the essential elements of the claim are established with reasonable adequacy. I am also of the opinion that the award recommended by the learned Deputy Commissioner, though considerable, is not excessive in the circumstances.

The learned Deputy Commissioner reserved the question of expenses for my consideration. In addition to the fees of the Canadian lawyers for the claimant, a statement of expenses and fees of the Greek lawyer was submitted totalling 94,000 drachmae, or the equivalent of about \$3,100.00, at the average rate of exchange prevailing in 1956. This amount included the expenses said to have been incurred in the preparation of the claim of *Mrs. Antigoni Brown—Case No. 9687*.

In the assessment of compensable expenses, the following factors must be kept in mind:

(a) No expenses incurred in Canada can be reimbursed from the War Claims Fund;

(b) The Commission has not customarily provided for lawyers' fees, even when incurred abroad;

(c) The compensable expenses are limited by the War Claims Rules to 10% of the amount paid to any claimant out of the War Claims Fund;

(d) The expenses submitted in this case, and particularly the fees claimed by the appraisers, are far in excess of those incurred in any case of similar nature;

(e) A substantial portion of the expense account consists of translators' fees; the Commission normally prefers to have foreign documents submitted in the original language, and official translation facilities are available without expense to claimants;

(f) A very considerable portion of the expenses submitted were not directly and necessarily incurred in the preparation of the claim for presentation to this Commission.

On consideration of all the circumstances of the case, I would allow \$975.00 for expenses incurred abroad in preparation of these claims, exclusive of the claim of *Mrs. Antigoni Brown*, which will be dealt with in a separate report.

As the late Mr. Brown died on 15th October 1955, and as he was therefore still alive on 23rd October 1952, the date of formal presentation of his claim to this Commission, it is not necessary to record a finding as to the national status of the beneficiaries of his intestacy. Since, however, those beneficiaries are survivors to a claim analogous to a chose in action, it should devolve in accordance with the law of the place of domicile of the deceased at the time of his death. Although the late Mr. Brown had resided for some time in Greece, he died as a Canadian citizen, and it is at least arguable that he retained a domicile of choice in the Province of Alberta. Pending an authoritative decision on the domicile of the late Mr. Brown, I consider that a cheque for his award might most properly be made in favour of his estate, whereupon the distribution of the award would be carried out under the direction of a court of competent jurisdiction.

With the foregoing comments, I approve the reports of the Deputy Commissioner.

I accordingly recommend that there be paid to the Estate of George Ioannou Brown, deceased, (for distribution under the direction of a court of competent jurisdiction) the following amounts:

(a) \$130,663.00 as an award for loss of property in Greece, such payment to be in orders of Priority Nos. 3(a) to 7 inclusive, and to bear simple interest from 1st January 1946 at 3% per annum:

(b) \$975.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish the claim, such payment to be without interest, and not be taken into account for Priority purposes.

Dated this 3rd day of February, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8764

Re: Cairns

Deputy Commissioner Hyndman submitted to me his findings and recommendations in a report dated 16th June 1955, wherein he recommended an award for loss of property at the sinking of the SS "*Athenia*", but recommended disallowance of the claim for personal injury.

The claimant was furnished with a copy of the Deputy Commissioner's report, and strongly protested against the alleged inadequacy of the compensation recommended, intimating her contention that the property award should be increased and that an award should be granted for personal injury.

The learned Deputy Commissioner subsequently reconsidered the personal injury claim with great care and deliberation and submitted a further report dated 18th February 1959 wherein he recommended a personal injury award of \$100.00 based on established loss of wages occurring shortly after the *Athenia* disaster. In the interval between the two reports to which I have referred, a series of medical examinations of the claimant was conducted by Dr. David J. MacKenzie, Consultant in Medicine in Sunnybrook Hospital, Toronto, and the Deputy Commissioner had the benefit of an extensive and detailed opinion formed by Dr. MacKenzie on the basis of his examinations and in the light of the claimant's previous medical history.

The claimant has been furnished with a copy of the Deputy Commissioner's supplementary report, and has again protested against the alleged inadequacy of the award recommended. She appears to be under the impression that Dr. MacKenzie is an official of the War Claims Commission and that at the times of the examinations "he was for you people one hundred per cent."

As a matter of fact, Dr. MacKenzie had no official connection with the Commission. Although the Commission recommended him as an independent examiner, and arranged for payment of his fee out of the War Claims Fund, he was selected not for the purpose of combatting the claimant's contentions, but with the object of providing an opinion which would be completely impartial and without bias.

The learned Deputy Commissioner has found that there is no proof of medical expenses for any period prior to the claimant's severe illness in 1951 and 1952, approximately 12 years after the "*Athenia*" experience. In every case where a claim is made for personal injury emerging at such a long interval after its alleged cause, the Commission has required cogent evidence that an operation of war was the actual, or at least an aggravating, cause of the illness and pecuniary loss which took place. Not only has such relationship of cause and effect not been established in the present case, but the evidence rather indicates that there was no etiological (i.e. causal) relationship between the 1939 experience and the 1951-2 illness.

After a very careful review of all aspects of this case, I am of the opinion that the evidence does not warrant more generous awards than those recommended by the learned Deputy Commissioner.

The claimant now informs the Commission that she incurred \$95.00 in legal fees necessitated by the preparation of her claim. Unfortunately, the War Claims Rules specifically prohibit the reimbursement, out of the War Claims Fund, of any legal or other expenses incurred in Canada in connection with the preparation and presentation of claims...

Dated this 9th day of March, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8768

Re: Stephens

... In the meantime, the claimant has admitted that he received from the United Kingdom Government, the sum of £15.0.0 as partial compensation for the maltreatment suffered during his custody by the Japanese. He states that he returned this sum to the British Ministry of Pensions, being apparently under the impression that it would not be proper for him to receive awards from two different sources for the same maltreatment. That impression was, of course, erroneous, as the amount received from the British Ministry would have been deductible from any award which might be made to the claimant out of the Canadian War Claims Fund. Unfortunately for the claimant in this connection, he cannot benefit by ignorance of the War Claims Rules, which oblige this Commission to deduct, as compensation otherwise provided, not only any amounts which the claimant has received from other sources, but any amounts which he could have received from other sources by the exercise of reasonable diligence.

Under the War Claims Rules, the claimant is therefore entitled to \$1.00 per diem for the 226 days of his custody, from which must be deducted the sum of £15.0.0, or \$40.08, which he received or could have received from the Government of the United Kingdom...

Dated this 17th day of November, A.D. 1954.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 42(IT) 8778

Re: Di Murro

This claim was heard by me in Montreal on the 17th May 1956. Applicant appeared and was sworn. Mr. Nicol represented the Commission. Mr. Salvatore D'onofrio was sworn as interpreter.

The claim is for

- (1) 239,000 lire for damage to a house of 4 rooms located in Colle San Magno, No. 8 Via Meridiana, Province of Frosinone, Entry 1440, Section 21, Lot 130/2; and
- (2) 654,000 lire for damage to furnishings in said house.

Ownership of said house has been established.

Applicant was born on 16th March 1889 in Caserta, Italy; landed in Canada on or about the 14th July 1920; was granted naturalization in Canada on 8th March 1926 and has remained in Canada ever since. Eligibility has therefore been satisfactorily established.

Although applicant was aware of the necessity of filing a notice in writing to the Government of Canada under the *War Claims (Italy) Settlement Regulations* and evidently gave instructions to his solicitor to file such notice, after diligent search, no notice has been produced or found. Failure in this regard renders the claim under the Italian Treaty inadmissible. The amount he might have received under the Treaty would therefore be deductible from any award under the Rules of the Commission. It is therefore necessary to ascertain what he might have received under the Treaty.

Applicant never having been in Italy during or since the war consequently knows nothing of the damage personally.

Claimant engaged a geometrician in Italy to value the damage caused by the bombing during the war who made a detailed report fixing the damage at 239,000 lire. This report was referred to the Department of External Affairs with a request that it be passed to the appropriate Italian authority. A valuation by the official technician was made and the Italian Minister reported on the 27th April 1955 in part as follows:

“—that, in effect, the real estate property of the plaintiff, consisting of a dwelling of three rooms, one pantry, one water closet, situated in the Via Domenica Di Murro, No. 8 (formerly Via Meridiana 6) recorded in cadastre under section 1440, folio 21, No. 130/11, suffered damage limited to and including the electric plant, the fixtures and to the ceiling, due to the war operations conducted, as is known, in that zone;

—that, in this case, the real estate in question was not subject to sequestration or to other measures envisaged under the laws of war;

—that, for the damages at issue, no financial compensation and no contributions were conceded by the Public Treasury.

As to the damages suffered in the above-mentioned dwelling, be it known that this damage has been verified and approved by the competent Technical Office of the Treasury as in the total amount of 112,000 lire at the present purchasing power of money, and taking into account the type of construction, the state of preservation and maintenance at the time of the damage.

In conclusion, the damages certified and actually suffered by the real estate of the said claimant would amount to 112,000 lire (at present purchasing power of the lire) as against the petition for 239,000 lire.”

It seems to me the valuation made by the applicant's technician is likely too high, but I am also inclined to think it is somewhat conservative. I think a sum of 150,000 lire would be fair compensation for the loss of which applicant would be entitled to two thirds under the Treaty.

As to the claim for 654,000 lire for damage to or loss of furniture, I find no satisfactory evidence either of ownership or possible value. Judging from the nature of the damage to the house, it is difficult to see why there should have been damage to the contents. It seems the building was not actually bombed, but rather suffered as the result of an explosion in close vicinity. To quote from the Minister's report:

“suffered damage limited to and including the electric plant, the fixtures and to the ceiling”.

In my opinion this would indicate that such things as tables, chairs, etc. etc. would not be seriously damaged.

However, taking everything into consideration, I think the loss might reasonably be assessed at 60,000 lire in respect of the moveables.

I find the damage for house amounts to 150,000 lire and 60,000 lire for furniture, a total of 210,000 lire to which applicant would be entitled to two-thirds thereof under the Treaty.

However, as above-mentioned, not having filed a notice under the said *Regulations*, such claim is inadmissible and must be disallowed.

Claim under the Rules of the Commission will be dealt with later, and from any award granted under said Rules there must be deducted 140,000 lire being two-thirds of said 210,000 lire assumed to have been received by claimant under the Italian Treaty.

November 30, 1956.

(Sgd) J. D. HYNDMAN

Deputy War Claims Commissioner

NOTE. The above disallowance was confirmed by Report of the Chief Advisory Commissioner dated 7th December 1956, but payment of an award was subsequently approved by virtue of extension of time for applications provided by Order-in-Council P.C. 1960-1019 of 28th July 1960.

CASE No. 8778 (42 IT)

Re: Di Murro

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report on his claim under the Treaty of Peace with Italy; and with a copy of my report to the Minister of Finance on that claim; and with a copy of the Deputy Commissioner's recommendation on the claim against the Canadian War Claims Fund. The claimant has omitted presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid:

(a) \$207.85 as an award for loss of property in Italy, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$212.16 deemed to have been received pursuant to the Treaty of Peace with Italy, with interest adjustment from an estimated date of 13th December 1956.

(b) \$47.00 as an award for reasonable expenses necessarily incurred by the claimant outside Canada in order to establish his claim, such payment to be without interest.

Dated this 12th day of March, A.D. 1957.

(Sgd) THANE A. CAMPBELL

Chief War Claims Commissioner

NOTE: See, however, subsequent note to report of Deputy Commissioner on corresponding Italian Treaty Claim No. 42 (IT).

CASE No. 8783

Re: Lancaster

The claimants appeared before me at Edmonton on September 13, 1955, in support of their claims for loss of personal property on September 3, 1939, due to the sinking of *S.S. "Athenia"* by enemy action, as well as for personal injuries suffered by the claimants' son at the same time.

National Status

Harry Lancaster was born November 30, 1893, at Yorkshire, England, and Ethel Lancaster, on March 18, 1899, at Thirsk, England, birth certificates on file. They were married on September 15, 1921, in England: marriage certificate on file; and sailed for Canada in 1928, where they arrived at the Port of Montreal on June 23, 1928, for permanent residence. They returned to England in April 1939, having decided to remain in England but the climate did not agree with Mrs. Lancaster so a decision was made to return to Canada.

The Department of Citizenship and Immigration letter dated August 20, 1954, contains the following extract: "It has been established that Mr. and Mrs. Lancaster are deemed to have held Canadian domicile on September 3, 1939, and on January 1, 1947. They are deemed to be Canadian citizens under Section 9 (1)(b) of the Act. Their son, Thomas Lancaster, is a natural born Canadian citizen and would have had Canadian domicile at the relevant times if confirmation of his birth at Edmonton, Alberta, on April 23, 1932, has been submitted." The birth certificate of the son showing his birth at Edmonton on April 23, 1932, has been filed with the Commission and is on file.

I am satisfied on the foregoing evidence that each of the claimants, as well as their son, had Canadian domicile at all relevant times.

Information furnished the Commission shows that the official passenger list of S.S. "*Athenia*" includes the names of Ethel and Harry Lancaster travelling third class, of British nationality, embarked at Liverpool and landed as survivors at Greenock. There is produced, in addition, a letter from the Cunard White Star Line, Liverpool, under date August 28, 1939, in which is an acknowledgment of the payment of their transportation expenses incurred for the sailing of the S.S. "*Athenia*" due to take place on September 2, 1939, see *Exhibit 2*.

Property Loss

The claimants have filed a claim for loss of household effects, mechanic's automotive tools, glassware, chest of silverware, family Bible, clothing, set of chinaware and \$375.00 in cash in sterling currency. A discrepancy appears in the figure of currency shown in Form H, i.e., \$375.00, and the amount of currency shown in an affidavit sworn by the claimant on May 3, 1940, filed with the Custodian, in which the figure £126 is mentioned, valued at \$625.00. The claimants were unable to explain the discrepancy and said that they had no clear recollection as to how much sterling currency they had. I have, therefore, reached the conclusion that the figure of \$375.00, as now claimed, must be regarded as substantially correct, since it is not greater than the claimant might be expected to have in his possession to defray the travelling and transportation expenses of his family to their home in Alberta.

The claimants were unable to enumerate in greater detail the lost articles. In my view these articles are such as might reasonably be expected to have been in the claimants' possession when returning here from England. They are not able to produce any evidence to verify the fact of possession of \$375.00 cash. The claimants value the lost articles in gross at \$1200.00 which includes the currency. Mrs. Lancaster stated that the greater amount of linen and other household effects had been in use, with the exception of a pair of woollen blankets which had been bought in England. The chime clock was new as was the chest of silverware. In her view the values broken down were as follows:

\$375.00—cash

75.00—automotive tools

750.00—value of the household goods.

This claimant estimates the value of the household goods as their worth at the time they were lost, from which I conclude that she based the valuation on cost of replacement although her evidence is not very clear on this feature.

I was favourably impressed by both claimants and accept their evidence as entirely credible. The evidence of value is less satisfactory. I would estimate the value of the lost household goods, many of which had been in use, at approximately 75% of the value estimated, and would, therefore, assess the value of those goods at \$575.00. I accept the claimants' evidence as to the value of the tools as well as their estimate as to the amount of cash which they had with them, which I consider to be reasonable since they would be expected to carry sufficient to care for themselves in transit to Edmonton. I would therefore assess the loss at \$1,025.00.

The claimants received from the British Ministry of Pension the sum of £150, converted at the rate of \$4.02, i.e \$603.00

The claimants present a further claim for expenses incurred over a period of years in consequence of injuries sustained by their son when rescued from the vessel.

These expenses are in part vouched by *Exhibits 4, 4(a) and 4(b)*, as follows:

Feb. 14, 1953	Royal Alexandra Hospital (<i>Ex. 4, File 319BH</i>)	\$342.60
Feb. 23, 1953	Dr. Leitch [<i>Ex. 4(a)</i>]	65.00
May 25, 1953	Dr. Taylor [<i>Ex. 4(b)</i>] not paid	400.00

There was evidence by Ethel Lancaster that she had incurred additional expenses for the services of Doctors Swarrage, Lee and Miller, as well as for drugs, for which no vouchers are available. I thought it reasonable to estimate these expenses at \$200.00. I am satisfied on the evidence that the claimants incurred expenses for the treatment of their son in the sum of \$1007.60, made up of the items before set out.

I therefore recommend payment to the claimants of the sum of \$2032.60, from which must be deducted the sum of \$603.00 *ex gratia* payment from the British Ministry, leaving net balance of \$1429.60, together with simple interest at the rate of 3% per annum on \$1025.00 from the 3rd September 1939 pursuant to the rules and simple interest at the rate of 3% per annum on the sum of \$607.60 from the 1st of March 1953, which I estimate to have been the date of payment of the medical expenses other than that of Dr. Taylor, which has not yet been paid according to his evidence although the claimant is liable therefor and I have no doubt will pay on receipt of payment from the Treasury Board.

(Sgd) H. I. BIRD
Deputy War Claims Commissioner

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review.

The first problem arising on a review of this claim is the question of the national status of the claimants involving the question of their domicile at 3 September 1939. The learned Deputy Commissioner finds that they were admitted to Canada for permanent residence on 23 June 1928. He further states

"they returned to England in 1939, having decided to remain in England but the climate did not agree with Mrs. Lancaster so a decision was made to return to Canada". On the basis of that finding of fact, I should be obliged to conclude that the claimants, having returned to England in April 1939, and having decided to remain in England, would have abandoned their domicile in Canada and would not have regained it until they again arrived in Canada for permanent residence. I gather, however, that the learned Deputy Commissioner's expression "having decided to remain in England" was an error of transcription, and that what he really intended to find was more in line with the statement of Counsel for the claimants that they "considered staying in England permanently at that time but she found that the climate was not satisfactory to her health, so the decision to return to Canada was made." The foregoing statement was made by claimants' Counsel on 1 June 1954, and is therefore probably entitled to more weight than if it were made in the course of an argument on the present review. In support of their former statement, claimants' Counsel have submitted evidence to the effect that when the claimants left for England in April 1939 they left a quantity of personal effects in storage with Elias Soppold at Cherrill, Alberta. They have also presented a pass book of the Canadian Bank of Commerce, indicating that a small savings account was left open in that bank at Edmonton when the claimants went to England, and was kept active at least until 1952.

In all the circumstances of the case, I think the claimants are entitled to the benefit of the doubt, and to an inference that, while they were in England in 1939, their attitude towards remaining there was one of tentative consideration rather than actual decision. From that inference it would follow that they would retain the domicile in Canada which they had established by residence since 1926.

As to the expenses incurred by the claimants for medical and hospital treatment of their son, I am not entirely satisfied that these expenses (accruing, as most of them did, a considerable number of years after the "*Athenia*" incident) were directly related to any personal injury sustained by Thomas Lancaster as a result of the sinking of the "*Athenia*". I am, however, not disposed to disturb the finding of fact made on this point by the learned Deputy Commissioner, on the basis of an oral hearing.

With necessary restatement for the sake of uniformity of interest payments, I therefore approve the report of the Deputy Commissioner without variation, and I recommend that the claimants be paid jointly:

- (a) \$1,025.00 as an award for loss of property at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3 September 1939 at 3% per annum; subject to deduction of 603.00 received from the Government of the United Kingdom, with interest adjustment from 28 November 1947;
- (b) \$1,007.60 as an award for compensation for expenses incurred by reason of personal injury sustained by the claimants' son, Thomas Lancaster, on the same occasion, such payment to be in order of Priority No. (1-2); \$400.00 thereof to be payable without interest, and the remaining \$607.60 to bear simple interest from 1 March 1953 at 3% per annum.

Dated this 12th day of March A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8784

Re: Lancaster

This claim should be considered in relation to those of the claimant's parents, CASE No. 8783.

In the report on these claimants I found that this claimant's national status had been proved; that it had been established that he was a natural born Canadian citizen and was a passenger with his parents on S.S. "Athenia" when the vessel was sunk by enemy action on September 3, 1939.

The claimant was then a child 7 years of age. It appears from the evidence of his parents that he spent 12 hours in an open life-boat following rescue of claimant and his parents from the vessel. During that time the parents say he was subjected to severe exposure and witnessed the death of several persons. During the period one of the adult survivors in the life-boat took the child's life preserver from him. Both parents testified that, as a result of shock induced by that experience, claimant's health was seriously impaired. The mother says that upon the boy's return to Canada he seemed very restless and as time went on he became worse. In 1942 he "started to twitch". Up to that time he was able to attend school. Between 1942 and 1945 he was able to resume school, but was from time to time under treatment by various doctors later mentioned. During these years and continuing into 1946 the parents incurred considerable expense for medical and hospital treatment. Due to the deterioration in his physical and mental condition, the claimant lost schooling in 1942 and in 1945. Continuing until about June 1946, he was constantly under medical and psychiatric treatment and lost close to two years school attendance. It is said that in consequence he has suffered permanent loss in income due to the fact that he has been compelled in the circumstances to follow an avocation which provides a substantially lower income than he could have earned had he completed his education in public and high schools and continued with a university education, which the claimant's father was able to finance for him.

The claimant appeared in person when he confirmed the statements made by Dr. Taylor, *infra*, as to his physical condition when first examined by this psychiatrist in 1945. In May 1946 he was sufficiently restored to health as a result of the treatment given him by Dr. Taylor to permit him to resume school attendance. He continued his education to Grade 8. Then in 1949, at the age of 16 he undertook employment with Crane Limited, a plumbing supply firm. He said that since that time he has been steadily employed and now earns \$230.00 per month. His claim is also supported by the evidence of his parents and Carleton Taylor, Esq., M.D., a specialist in psychiatry practising in Edmonton. Dr. Taylor stated he had been engaged in the practise of that branch of medicine for twenty-five years. He treated the claimant over a period in excess of one year. A copy of his report as to the condition from which the claimant suffered is on file—see *Exhibit 3* (File 319BH) CASE No. 8783).

The details of the condition as found by Dr. Taylor in May 1945, and the treatment prescribed by him, I think, need not be repeated in detail here. Suffice it to say that Dr. Taylor reached the conclusion that "the emotional reaction to the experience in the life boat as appeared under pentothal anaesthetic indicated that the illness of the boy was the result of the strain to which he had been subjected." The treatment given in 1946 was declared by Dr. Taylor to have been markedly successful. He was discharged in the Spring of 1946 and was advised to resume his schooling.

Dr. Taylor in his testimony affirmed and explained his report (*Exhibit 3*) *supra*, and the purpose and effect of pentothal treatment—see *transcript pages 3 to 6*. He said that the claimant had made a good adjustment as a result of the treatment, that if the same treatment had been given in 1940 the same result

might have been expected. He described the condition from which the boy suffered as akin to shell shock as it was known in *World War I*.

There is another significant factor, in my view, in Dr. Taylor's evidence, i.e., that the claimant "had to stop school much too early because of economic difficulties in the home. He "had to go to work." Information which was given to him by the parents.

He said that he had examined the claimant a week prior to the hearing when he found him in good condition. "I feel he is one of our excellent cases in psycho therapeutics."

Mrs. Lancaster in her evidence on the joint claim of herself and her husband expressed her view as to the claimant's condition from the time the family returned to Canada in 1939 substantially in the terms above recited—see CASE NO. 8783—*transcript pages 11 and 12*. The parents appear to have taken medical advice in regard to his condition over a considerable period prior to the treatment given by Dr. Taylor, but theretofore had not consulted a psychiatrist.

I am satisfied, on the evidence of Dr. Taylor, that the physical and mental condition of the claimant diagnosed by him in 1945 was attributable to the claimant's experience following the sinking of *S.S. "Athenia"*. There is no satisfactory evidence as to when this condition first became apparent. However it is reasonable, I think, to conclude from the fact that the claimant entered Grade Six on his recovery in 1946 that he had been able to attend school from 1940 to 1944 except for a short period of hospitalization in 1942—see *Exhibit 4*—during which time he had completed 5 school grades. Further, I conclude from his mother's evidence that he was unable, due to his nervousness, to make the most of instruction given him. It appears that the hospitalization in 1942 was for a similar nervous disorder, though in less aggravated form than was found in 1945. It is evident that he was totally incapacitated from January 6, 1945 to March 15, 1946.

Under the Rules the principles applicable to assessment of damages for personal injuries sustained by individuals due to enemy action restrict the award to pecuniary loss only. The following is an extract from the Rules, page 37:

"The injured person should be compensated for all special and general damages based on financial loss, e.g. medical, hospital, nursing expenses, necessary employment of extra assistance, loss of earnings down to the time of adjudication, loss of *earning capacity for the future* and all other pecuniary loss which would be compensated by damages in a civil action in the courts."

In CASE NO. 8783 I have recommended payment to the claimant's parents of the total of the hospital and medical expenses incurred by them for the care and restoration to health of the claimant—*Exhibit 4, 4(a) and 4(b)* and in addition the sum of \$200.00 which I think is a reasonable estimate of the expenses incurred for treatment given this claimant by Drs. Swarrage, Lee, and Miller, as well as for drugs purchased for him, though no vouchers are available therefor.

Personal Injuries

This claimant seeks to recover compensation for personal injuries in the sum of \$25,500.00 based on loss of prospective future earnings of \$850.00 per annum for 30 years. The claim is founded on the assumption that his incapacity arising from the experience following the sinking of the vessel made it impossible for him to pursue his education to the standard of a university degree and the consequent loss of a greater future income than is possible with his present educational equipment.

The evidence, in my opinion, does not warrant a conclusion that the claimant, but for his illness, would or could have obtained a university education for in 1948 or 1949 the economic status of the claimant's father made it necessary that claimant undertake remunerative employment at that time. He was then 16 years of age.

However, I think it does appear from the evidence that the claimant's education was retarded by his physical and mental condition during the years 1940 to 1944. He was unable to attend school throughout the period January 1945 to March 1946. In my opinion the evidence affords support for the conclusion that in consequence he lost two to three years schooling. But for this loss it is not unreasonable to estimate that by 1949 he would have attained a high school standard.

The question then arises whether in these circumstances it could reasonably be said he has in consequence suffered "a loss of earning capacity for the future"—Rules page 37, para. 3, *supra*. I conclude from the fact that claimant has been in steady employment with the same employer for six years and is presently "Country shipper" earning \$230.00 per month at the age of 23 years, that he must have been found by his employers to be a reliable and steady workman. It is, I think, not unreasonable to conclude that, given a better educational background his opportunities for advancement in his present employment would have been improved, but to what degree can only be a matter of conjecture. I am of opinion, therefore, that it has been shown that the claimant has suffered a loss of future earning capacity. The estimation of that loss must necessarily be arbitrary. Having in mind the claimant's present age, his steady work record, the possibility of loss of employment for other reasons such as loss of capacity to work through illness (other than attributable to his War experience) or accident, the best consideration I can bring to the problem is that a reasonable estimate of the loss is \$3,000.00 based on an estimated increase of \$300.00 annually for a period of ten years.

I recommend payment of compensation accordingly together with simple interest at the rate of 3% per annum from August 1, 1942, which I regard as the date that the injury first became apparent although the cause of it took place on September 3, 1939.

(Sgd) H. I. BIRD

Deputy War Claims Commissioner

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

Though I am not entirely convinced that the evidence satisfactorily establishes a causal connection between the S.S. "*Athenia*" experience and the claimant's subsequent incapacity, the most of which occurred a considerable number of years after the disaster, I am not disposed to disturb the finding of fact made by the learned Deputy Commissioner after careful consideration on the basis of an oral hearing.

As to the assessment of compensable loss, the Deputy Commissioner's finding is based on a loss of \$300.00 annually for a period of ten years beginning 1 August 1942. In order to arrive at the actual loss as of that date, it is necessary to capitalize the ten-year annual loss, and the result is a capital sum of \$2,597.44. It is therefore necessary to substitute the last-mentioned

amount for the \$3,000.00 estimated by the Deputy Commissioner. The apparent discrepancy between this capital amount and the ten-year annuity will, of course, be made up by the annual interest.

With the foregoing variation, I approve the report of the Deputy Commissioner and I recommend that the claimant be paid \$2,597.44 as an award for person injury sustained by himself at the sinking of the S.S. "Athenia", such payment to be in order of Priority No. 3(a), and to bear simple interest from 1 August 1942 at 3% per annum.

Dated this 12th day of March, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8787

Re: *Middlecoat*

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

The only variation which I would make in the recommendation submitted by the learned Deputy Commissioner concerns the "loan" of \$1,500.00 referred to in his report. I should regard this advance rather as *interim* compensation advanced to the claimant by the Canadian National Railways, which in turn was subrogated *pro tanto* to repayment out of moneys which might later be received by the claimant from any reparations authority or commission. As the claimant apparently assigned a relative portion of his share to the Railway Company, that assignment constitutes the basis of the continued validity of that portion of the claim, and the \$1,500.00 should therefore be paid directly to the Railway Company. Though the \$1,500.00 is to be paid to the Company without interest, the claimant has had the use of that sum since the date of its receipt, and as between the claimant and the War Claims Fund the interest on that amount must be adjusted as at 1st January 1946.

With the foregoing variation, I approve the report of the Deputy Commissioner and I recommend that the claimant be paid:

- (a) \$176.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);
- (b) \$3,500.00 as an award for loss of property at Hong Kong, such payment to be in orders of Priority Nos. 3(a), and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,500.00 received from the Canadian National Railways by way of *interim* compensation, with interest adjustment from the same date.

I further recommend that the sum of \$1,500.00 to be deducted as aforesaid be paid to the Canadian National Railways, without interest, by way of subrogation, as repayment of *interim* compensation advanced to the claimant.

Dated this 6th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8790

Re: Muir

...I therefore recommend that the claimant be paid \$2,656.00 as an award for loss of personal property in Burma, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$302.29 received from the Controller of Military Accounts at Keerut, India, with interest adjustment from a mesne date of 10th August 1943.

Dated this 7th day of June, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8791

Re: McAllister

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I have also notified the claimant, under the provisions of Rule of Procedure No. 20, to the effect that it might be necessary to revise downward the recommended award to give effect to a deduction of the potential proceeds of war risk insurance which the claimant might reasonably have been expected to effect on the shipment concerned.

Claimant's counsel submits that the War Claims Rules cannot be interpreted to require such a deduction. He argues that the Rules must be strictly interpreted as in a penal statute and that if the words "war risk insurance" are not spelled out they cannot be implied. Without admitting the validity of the claimant's argument, it seems to me that the discussion on pp. 66 and 67 of the Report of the Advisory Commission on War Claims indicates with sufficient clarity that war risk insurance is one of the topics concerned. The section in question is headed "claims for losses which could have been insured against." The learned Advisory Commissioner notes that Commissioner Friel (World War I) did not follow the principle applied by the Sumner Commission, but gave no reasons for not doing so. It would certainly appear from the argument cited from Commissioner Friel's Report that he believed the principle should be applicable. In any case, the learned Advisory Commissioner leaves no question open when he says: "...the claimants, who for the most part are owners of ships and cargoes, who could have taken out war risk insurance, should not be entitled to claim where their position justified the expectation that in the ordinary course of things they would appreciate and resort to insurance and they did not do so. The claim should be reduced for this reason only by the amount of the insurance which they might reasonably have been expected to be able to obtain plus the estimated amount of the premium which the insurance would have cost. If such claimants were allowed the full value of the property lost, although they neglected to insure, other claimants who had paid out insurance premiums would be discriminated against. The negligent owner would, in effect, be getting free insurance."

It is true that the application of this principle is directed primarily against commercial shippers, but not exclusively so. I have given a great deal of consideration to the application of this principle, and have discussed it with the

Deputy Commissioners. In consequence, I have divided the requirements of war risk insurance into the following three categories: (a) personal baggage of passengers is exempt from the requirement; (b) shippers of personal effects by common carrier are deemed to have received insurance (where available) in an amount not less than 50% of the established value; (c) commercial shipments are required to be protected by more adequate insurance (where available), depending on the circumstances of individual cases.

In the present case, the claimant testifies that he carried "no insurance either marine or war risk". Following my interpretation of the War Claims Rules, I must find that the claimant is deemed to have received insurance for at least one-half the established value of the goods lost, or \$87.50. This amount, together with the premium for such insurance, estimated at \$2.62, must be deducted from the established value of the goods in order to arrive at the net loss. The net loss will therefore be \$84.88.

With this variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$84.88 as an award for loss of personal property at the sinking of the S.S. "*Lady Drake*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 20th April 1942 at 3% per annum, or from the established date of the sinking of the S.S. "*Lady Drake*."

Dated this 7th day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8794

Re: Pfeffer

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has intimated that he is prepared to accept the award recommended by the learned Deputy Commissioner, and that he does not intend to make any further representations except to ask that consideration be given to the reimbursement of expenses incurred in the preparation of his claim.

The property damaged, as the learned Deputy Commissioner points out, was situated in Bratislava. The evidence and materials available to the Commission indicate that the locality in which the property was situated was not transferred to Hungary in the border adjustment of 1938-39, but remained part of Slovakia. That being the case, the principle of interpretation adopted by the Commission for determination of ownership of property in Czechoslovakia would apply, namely that confiscatory measures enacted or put into effect by German puppet governments or other German authorities in Czechoslovakia should be disregarded, since Canada did not at any time recognize such German authorities as being de facto governments in Czechoslovakia (see CASE No. 1486—*Re Whitehead*).

I am therefore of the opinion that the learned Deputy Commissioner properly decided that it is immaterial whether or not the Germans actually confiscated the claimant's property before the time when it was damaged by war operations. Though, in the circumstances, it is difficult to assess the quantum of the actual damage with arithmetical certainty, I consider that the estimate reached by the learned Deputy Commissioner is fair and equitable from all points of view involved.

As to the question of expenses, the claimant originally claimed \$1,000.00, but later reduced the amount to \$500.00. It must be remembered that the War Claims Rules preclude the Commission from recommending any payment of legal or other expenses incurred in Canada. It is obvious, however, that very considerable expenses were incurred abroad by the claimant in the preparation of his case, and I am inclined to the view that the sum of \$500.00 is not an exaggerated computation of the amount so expended. I would therefore recommend that the claimant be reimbursed to that extent.

With the foregoing addition of expenses, I approve the report of the Deputy Commissioner.

I therefore recommend that the claimant be paid:

(a) \$15,000.00 as an award for damage to property in Czechoslovakia, such payment to be in orders of Priority Nos. 3(a) to 4(b) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$500.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim, such payment to be without interest, but not to be taken into account for priority purposes.

Dated this 2nd day of April, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8796

Re: Truss

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The Claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

As to the claims for loss by death of Mr. Truss, Sr. and Mrs. Truss, the claimant urges that the majority of the beneficiaries at the time of their parents' death is irrelevant, and that they suffered substantial pecuniary loss owing to the fact that their father was not able to increase the total value of his estate as he would have done if he had lived, and was also unable to supplement the beneficiaries' monetary needs as he had done and as parents often do. It is arguable that in certain circumstances children may remain dependents of their parents even after majority or marriage. No such circumstances are disclosed in the evidence in this case. Even if it is arguable that the father might have continued to make voluntary and supplementary contributions to the monetary requirements of his children, such a benefit would obviously be more than counter-balanced by the acceleration of the benefits which the children received from his estate and which the Commission must necessarily deduct from any amount recommended as an award on a death claim. As to the contention that the deceased Mr. Truss would have substantially increased the total value of his estate if he had lived, this, of course, is a prediction which is subject to many contingencies, such as illness and unusual expenditures or loss. Even if Mr. Truss, Sr. had lived and had substantially increased his estate, there is no certainty that the children would have benefitted in a pecuniary way, as the father was legally free to give away his property or change his will at any time.

I am bound to agree with the conclusion of the learned Deputy Commissioner that no dependency of the beneficiaries has been established and that the death claims must be disallowed.

As to the claims for loss of property, the Deputy Commissioner clearly intended to recommend an award of \$635.00 for the property lost by Mrs. Truss, and \$600.00 for that lost by Mr. Truss, Sr., although there is unfortunately a clerical omission as to the finding of the latter amount.

No claim was made for an *ex gratia* award from the Government of the United Kingdom, though it is admitted that a notice of the availability of such awards was sent to the solicitor who had acted in the administration of the parents' estates, and that the notice was forwarded by the solicitor to the claimant's sister and co-beneficiary, Mrs. Kathleen Margaret Truss Shantz, as the solicitor did not happen to know the address of the executor, Mr. Harry Truss, Jr. The claimant contends that such a notice is not binding upon the estates, as they had both been legally wound up at that time, and the solicitor had no further interest in the affairs of the beneficiaries.

I cannot accept the validity of this contention. The Commission has not regarded absence of notice of the United Kingdom awards as in itself excusing claimants from making applications. Even on the assumption that notice was essential in such cases, the factual notice to the official solicitor of the estates, even if his function had technically been completed,—particularly as it was forwarded by him to the claimant's sister—is in my opinion sufficient to fix the beneficiaries with negligence in failing to prosecute a claim for an *ex gratia* award. The amount which might reasonably have been expected to have been received from the Government of the United Kingdom must therefore be deducted. I would, however, give the beneficiaries the benefit of the latest date at which claims were received by the Government of the United Kingdom, namely about 30th June 1949.

The learned Deputy Commissioner makes no finding as to the national status of the beneficiaries. The claimant, Harry Truss, Jr., and his sister, Mrs. Kathleen Margaret Truss Shantz, appear to be the sole beneficiaries of the estates, both of their father and mother. They are both certified by the Department of Citizenship and Immigration to be natural born Canadian citizens, and I therefore find that they are eligible beneficiaries of the recommended award.

With the foregoing variation affecting interest, I approve the report of the Deputy Commissioner and I accordingly recommend that these claims be consolidated and that the claimant, as executor and administrator respectively, be paid \$1,235.00 as an award for property lost by the late Harry Truss, Sr. and Maria Louisa Truss at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$800.00 deemed to have been received from the Government of the United Kingdom, with interest adjustment from 30th June 1949. The net payment, subject to the administration of the two estates, would be for the benefit of the claimant in his own right and of his sister Kathleen Margaret Truss Shantz, in equal shares.

For the foregoing reasons, and those mentioned by the learned Deputy Commissioner, I recommend that the claims for death of Harry Truss Sr. and Maria Louisa Truss be disallowed.

Dated this 14th day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8814

Re: Domina

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The present argument stresses a comparison between the *per diem* allowance award to former prisoners of the Japanese, and the system of lump sum awards applicable to claims by former prisoners in Europe. The evidence before this Commission confirms the ruling of the Advisory Commissioner on War Claims to the effect that maltreatment of prisoners in Europe was sporadic and intermittent, as opposed to the continuous severe maltreatment accorded to prisoners of the Japanese.

In all other respects, I find that the award is fully in line with those recommended for other claimants who were in custody for a comparable period and were subjected to similar incidents of maltreatment.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that the claimant be paid \$349.60 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 31st day of January, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8852

Re: Imperial Oil Limited

This claim was heard by me in Toronto on the 29th day of November 1954. Counsel for the applicant was Mr. J. F. Barrett of the Law Department of Imperial Oil Limited. Mr. R. J. Batt appeared for the Commission.

The claim is for a total of \$377,381.78 plus interest, for loss of ships and cargoes of oil and for certain equipment on said ships all due to acts of war on the high seas, particulars of which are dealt with below.

The following are the ships owned and lost by applicant viz:

M.S. "Canadolite"	—lost 14th April 1941
M.S. "Montrolite"	—lost 4th February 1942
M.S. "Victrolite"	—lost 10th February 1942
M.S. "Calgarolite"	—lost 9th May 1942.

Cargoes of oil were lost on the following ships:

M.S. "Montrolite"	—lost 4th February 1942
M.S. "Alexander Hoegh"	—lost 21st January 1942
M.S. "Penelope"	—lost 13th March 1942
S.S. "Muskogee"	—lost 17th March 1942
S.S. "Esso Boston"	—lost 12th April 1942
S.S. "Caribou"	—lost 14th October 1942.

Of the last mentioned ships, only one the S.S. "Montrolite" was owned by the claimant.

That Imperial Oil Limited is and always has been a purely Canadian Company, having been incorporated by Letters Patent issued by the Secretary of State for Canada, has been fully established.

It has also been established by certificate of the Director of Assessment Branch, Taxation Division of the Department of National Revenue, that the said Company has been carrying on trading activities continuously from prior to the late war to the 22nd June 1954.

As the question of war risk insurance applies to most of the claims, I deem it advisable at this stage to set out what is said on pages 66 and 67 of the Advisory Commission Report under the heading "*Claims for losses which could have been insured against*". I quote the following from the Ilsley Report,

"The Sumner Commission stated in its final report of February 26, 1924, p. 9, with reference to its position respecting the consequences of the claimant not carrying insurance, the following:

"The Commission have continued to apply the principle, that in the case of persons whose position justified the expectation that, in the ordinary course of things, they would appreciate and resort to insurance, it would be inequitable to allow them to rank, when insurance was available for their protection against the losses actually incurred. In the case of the Government Air Raid Insurance, this involved the consideration of the dates at which experience first showed certain zones to be within striking distance of enemy aircraft, and zones were accordingly carefully fixed in view of the date and the localities of the raids. Persons who could not reasonably be expected to insure were in all cases relieved from the application of this principle.

"It will be noted that Commissioner Friel gave no reason for not following the principle applied by the Sumner Commission. In my opinion, that principle should be applied and the claimants, who for the most part are owners of ships and cargoes, who could have taken out war risk insurance, should not be entitled to claim where their position justified the expectation that in the ordinary course of things they would appreciate and resort to insurance and they did not do so. The claim should be reduced for this reason only by the amount of the insurance which they might reasonably have been expected to be able to obtain plus the estimated amount of the premium which the insurance would have cost. If such claimants were allowed the full value of the property lost, although they neglected to insure, other claimants who had paid out insurance premiums would be discriminated against. The negligent owner would, in effect, be getting free insurance. This would be a real and substantial benefit to him as in most cases I would expect that his charges to customers, purchasers and users of his services would be the same as if he had been carrying insurance."

All the ships above-mentioned, with their cargoes, were plying on the high seas in different parts of the world. I think it was well known that German submarines were cruising about in the various oceans, and especially in the Atlantic, although perhaps more so in the North than in the South Atlantic.

Whilst I can understand the Company might think there was little danger of U boats, failure to insure means, in reality, either the Company taking the risk, or undertaking their own insurance.

I have given the question of insurance much thought, but regret I am forced to the conclusion, subject to what I say hereafter with regard to the S.S. "*Caribou*", that the cases fall within the ruling laid down by the Ilsley Report as above quoted.

Claims for lost ships

Re (1) *M.S. "Canadolite"*—

It is satisfactorily established that this ship was of Canadian Registry and was lost, having been taken in prize by the enemy on the 27th March 1941 and never since located after all efforts to do so. The alleged value of the ship is \$1,288,566.58. The amount of insurance recovered was \$1,288,566.58.

The loss of the vessel having been fully covered by insurance, the only claim is for loss of equipment totalling \$6,771.95, namely \$6,500.00 for loss of radio equipment rented from Canadian Marconi Company, which sum was paid by claimant, and \$271.95 for machines rented from Butterworth System Incorporated, also necessarily paid by claimant.

Under the agreements between Imperial Oil and said Companies, the former agreed to insure said goods but failed to do so, it being their policy not to insure equipment.

As under their agreement their obligation was to insure, and as their policy was, in effect, to run the risk, or carry their own insurance, it seems to me, under the Rules of the Commission as above mentioned, claimant is barred from any claim in this respect against the reparation fund.

Re (2) *M.S. "Montrolite"*—

This ship also of Canadian Registry and owned by the applicant Company, was lost due to enemy action, on the 4th February 1942. The ship carried no cargo. The value of the ship was placed at \$1,302,025.00 and insurance for the same amount was recovered. However, there is a claim in the amount of \$6,263.12 for a commission paid for collection of said insurance. As this was a matter not arising out of an act of war, but rather a private transaction with regard to insurance, I am of opinion that such cannot be allowed under the Rules of the Commission.

There is also a claim for loss amounting to \$6,655.40 for equipment leased from the Marconi Company and Butterworth System. This portion of the claim is on all fours with a similar one in the case of the *M.S. "Canadolite"* above. As in the case of the *Canadolite*, no insurance was carried as I held should have been, and not having insured, the claim must be disallowed.

Re (3) *M.S. "Calgarolite"*

This ship was of Canadian Registry and owned by the applicant and was lost due to war action on the 9th of February 1942.

The ship itself was fully covered by insurance and the only claim is for loss of equipment in the amount of \$6,655.40. Similar in all respects to that above dealt with in the case of *M.S. "Canadolite"* and *M.S. "Montrolite"*. As in those cases, no insurance was carried and the claims fail on that account, therefore no compensation from the War Claims Fund can be allowed with respect to equipment on the *M.S. "Calgarolite"*.

Re (4) *M.S. "Victrolite"*

This ship was of Canadian Registry and lost by war action on the 10th of February 1942.

Insurance was recovered for the full amount of the loss of the ship, but there is a claim for

Collecting Commission	\$6,338.12
Equipment	116.55
Equipment	6,500.00

What I said in the case of *M.S. "Canadolite"* with reference to claim for Commission applies equally to this case and must be disallowed.

Regarding the claim for loss of equipment on which no insurance was carried, what I said in the above applies herein also, and consequently this claim must fail.

Claims for lost cargoes

Re: *S.S. "Caribou"*

This is a claim for \$41,554.50 for loss of packaged petroleum products consigned to, and owned by, Imperial Oil Limited, St. John's, Newfoundland. No war risk insurance was carried. The said ship was torpedoed in Cabot Straits on the voyage from Sydney, Cape Breton to Port aux Basques, Newfoundland, on the 14th of October 1942, when said cargo was totally lost. Ownership by claimant of goods to value of \$41,554.50, and of loss by enemy action, has been satisfactorily established.

The *S.S. "Caribou"* was a ferry, carrying passengers and freight, plying between North Sydney and Port aux Basques aforesaid, the distance between the two points being about 110 miles and time of passage about nine hours. In addition to freight on the ship, there were some 300 passengers of whom many were drowned. It seems to me that in view especially of the large number of passengers, so far at any rate as the public was concerned, there was no great fear of enemy action in that area.

The question is, was the Company reasonably justified in not taking out war risk insurance for that particular voyage. That war risk insurance was high would not, in itself, be a good reason for failure to insure, but the vital question is, under all the circumstances, would a reasonably prudent man assume the risk himself. That the Company could have obtained war risk insurance is admitted. The evidence is that no insurance was ever taken out on the Company's cargoes on many trips similar to this. In view of the short distance and the length of time taken to make this voyage, I was inclined to the view that failure to insure might be excused, and that the claimant should be awarded the compensation asked for. But upon further serious consideration I regret that my opinion is that the Company having decided to run the risk or undertake the insurance themselves preclude them from validly claiming compensation from the War Claims Fund.

Re: *M.S. "Alexander Hoegh"*—Cargo

This is a claim for loss of cargo of oil lost on the high seas due to enemy action on the 31st January 1942 while on route from Casipeto, Venezuela to Halifax, Nova Scotia.

The value of the cargo was \$92,493.31. No War Risk Insurance was carried although such was obtainable.

It seems to me therefore that on such a voyage as this, it would have been prudent to carry insurance and failure to do so brings the claim within the principle dealt with by the Advisory Commission as heretofore set forth and consequently must be disallowed.

Re: *M.S. "Montrolite"*—Cargo

This claim is for the sum of \$115,698.59, the value of cargo of oil owned by claimant which was lost when the said ship was torpedoed by enemy action on the 4th of February 1942 on the voyage from Venezuela to Halifax, N.S.

As no War Risk Insurance was carried, what I said above in respect to the *M.S. "Alexander Hoegh"* applies equally to this case and the claim must therefore be disallowed.

Re: *M.S. "Penelope"*—Cargo

This is a claim for loss of cargo of 79,626 barrels of crude oil on said ship due to enemy action on the 13th March 1942. The ownership and loss have been satisfactorily proved. The value of the cargo, including freight and demurrage, was \$149,608.10. Insurance in the amount of \$148,619.10 was recovered leaving a balance of \$989.09. I am satisfied that such loss was incurred and would award said amount of \$989.09 with interest as hereinafter stated.

Re: *S.S. "Muskogee"*—Cargo

This is a claim for loss of 66,968 barrels of crude oil on said ship which was torpedoed and sunk due to enemy action on the 17th of March 1942.

Ownership and loss have been satisfactorily proved.

The value of the said oil was \$124,495.21 which included freight and demurrage. Insurance in the sum of \$123,715.02 was recovered leaving a balance of \$750.19.

I am satisfied said loss of \$750.19 was incurred to which applicant is entitled and would award same with interest hereafter mentioned.

Re: *S.S. "Esso Boston"*—Cargo

This claim is for loss of 87,634 barrels of crude oil. Said ship was torpedoed and sunk by enemy action on the 12th April 1942 en route from Venezuela to Halifax and said cargo lost.

The value of said cargo was \$265,766.68 including freight and demurrage. Insurance in the sum of \$179,072.12 was recovered leaving a balance of loss of \$86,585.56.

The explanation of the difference between the value of the cargo and the amount of insurance is that the cargo loss was insured with the United States of America represented by the War Shipping Administration under Ruling 384. The difference between the insurance and the loss resulted from the fact that the insurance value originally declared to the underwriters which was calculated on the then known freight rate of U.S.A. .7288 per barrel, which was later increased to \$1.723 per barrel with retroactive effect to 1st April 1942, and that the insurer refused to consider the claim for an adjustment of the value consistent with the retroactive effect of the freight increase to which this value was directly subordinate.

In view of this explanation, I am of opinion that the applicant is entitled to an award of the amount claimed, namely \$86,595.56.

I therefore recommend as follows:

Re: Ships

- (1) Claim for loss on *M.S. "Canadolite"* must be disallowed.
- (2) Claim for loss on *M.S. "Montrolite"* must be disallowed.
- (3) Claim for loss on *M.S. "Victrolite"* must be disallowed.
- (4) Claim for loss on *M.S. "Calgarolite"* must be disallowed.

Re: Cargoes

- (1) Claim for loss of cargo on M.S. "*Montrolite*" must be disallowed.
- (2) Claim for loss of cargo on M.S. "*Alexander Hoegh*" must be disallowed.
- (3) In respect to loss of cargo on M.S. "*Penelope*", I would allow the sum of \$989.09 with simple interest at the rate of 3% per annum from the 13th March 1942.
- (4) In respect of S.S. "*Muskogee*", I would allow the sum of \$750.19 with simple interest at the rate of 3% per annum from the 17th March 1942.
- (5) With respect to S.S. "*Esso Boston*" for loss of cargo, I would allow the sum of \$86,595.56, with simple interest at the rate of 3% per annum from the 12th April 1942.
- (6) With regard to loss of cargo on S.S. "*Caribou*", the claim should be disallowed.

No compensation from any other source has been received by the claimant.

The total of the above allowances is the sum of \$88,334.84, interest on the said several allowances to be adjusted as of the respective dates of loss.

There was a suggestion that each of the above should be treated as separate claims. However, at pages 85 and 86 of the Rules of the Commission, this question was dealt with by the Advisory Commission from which I quote the following:

"Again, a shipping company loses three different ships on different dates. Should the Company be given one priority only or what in effect are three priorities, one in respect of each of the three losses? Upon consideration I have come to the conclusion that the priority should be given to the claimant "*qua*" claimant and not to the claim "*qua*" claim."

I think it only proper to add that in my opinion this was one of the best prepared claims I have yet seen, all the material facts having been set forth with meticulous care and clarity.

October 25, 1955.

(Sgd) J. D. HYNDMAN

Deputy War Claims Commissioner

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review, though expressing some measure of dissatisfaction with the disallowance of some items of the claim, particularly the loss of cargo resulting from the sinking of the S.S. "*Caribou*".

I have consequently reviewed that portion of the claim with special care, bearing in mind the adjudication of somewhat analogous claims for goods lost on the S.S. "*Caribou*", and the disposition made by the learned Deputy Commissioner, in this case, respecting the somewhat analogous loss at the sinking of the S.S. "*Esso Boston*". It was, I think, entirely reasonable to expect that an oil company, when shipping a cargo of oil by tanker on the high seas in war time, would either insure the cargo for its full value, or elect to take the risk of any loss sustained. The situation involved in the shipment of packaged goods from North Sydney to Newfoundland on a general cargo and passenger ship is somewhat different. The formula adopted by the Commission is to the effect that (a) personal effects normally carried by a passenger or crew member on

his person or in his baggage are exempt from deduction by reason of failure to insure; (b) other non-commercial goods are subject to a requirement of at least 50% insurance, and consequently deduction for failure to insure; (c) commercial goods are subject to deduction, for failure to insure, of a larger percentage depending on the nature of the goods and the business in which the claimant was engaged. In a case recently reviewed by me, the Deputy Commissioner held that the owner of a shipment of cattle on the S.S. "*Caribou*" should, in prudence, have insured them for at least 60% of their value, and he made a deduction accordingly. It would seem that the nature of the goods shipped by this claimant on the S.S. "*Caribou*", coupled with the vastness of the business in which the claimant was engaged, would prescribe a larger percentage of insurance in relation to the value of the goods. I would estimate the required ratio of insurance at 80%. It will be seen that this treatment is not inconsistent with that accorded by the learned Deputy Commissioner to the loss of cargo on the S.S. "*Esso Boston*", on which he allowed the claimant approximately one-third of the total value of the cargo, representing the excess of the established value over the amount of insurance received. There is, as the Deputy Commissioner pointed out, an exception in that case explaining why the amount of insurance received was less than the total value of the cargo, and a lesser percentage than I should have expected it to be in the present case.

The learned Deputy Commissioner finds that the value of the goods lost on the S.S. "*Caribou*" was \$41,554.50. 80% insurance would have amounted to \$33,243.60, and the estimated Marine and War Risk Insurance would have been \$1,038.86. The War Claims Rules require that both these amounts must be deducted from the established value in order to arrive at the compensable loss. I am therefore of the opinion that the claimant is entitled to an award of \$7,272.04 in respect of the loss of packaged cargo at the sinking of the S.S. "*Caribou*".

I am in agreement with the opinion of the learned Deputy Commissioner on the other items of the claim, and I therefore approve his report with the foregoing single variation.

I therefore recommend that the claimant be paid the following amounts (totalling \$95,606.88) as an award for loss of cargo at the sinking of a number of vessels, such payment to be in the orders of Priority, and with interest from the dates, set forth below:

- (a) \$989.09 for loss of cargo at the sinking of the M.S. "*Penelope*", such payment to be in order of Priority No. 3(a) and to bear simple interest from 13th March 1942 at 3% per annum;
- (b) \$750.19 for loss of cargo at the sinking of the S.S. "*Muskogee*", such payment to be in order of Priority No. 3(a) and to bear simple interest from 17th March 1942 at 3% per annum;
- (c) \$86,595.56 for loss of cargo at the sinking of the S.S. "*Esso Boston*", such payment to be in orders of Priority Nos. 3(a) [subject to deduction in this order of Priority, of the sums of \$989.09 and \$705.19 awarded under items (a) and (b)], 3(b), 4, 5, 6, 6(a) and 7, and to bear simple interest from 12th April 1942 at 3% per annum;
- (d) \$7,272.04 for loss of cargo at the sinking of the S.S. "*Caribou*", such payment to be in order of Priority No. 7, and to bear simple interest from the 14th October 1942 at 3% per annum.

Dated this 7th day of December, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8862

Re: *Dodd*

...The claimants submit that their late father was very conservative in valuing the effects which he lost in the sinking of the "*Athenia*", and that the later inventory whose valuations total \$677.00 should be received in lieu of the original one totalling \$355.85. Though this submission was apparently suggested to the claimants' solicitor in 1947, it does not appear to have been advanced to any official or authority until a letter written to the War Claims Branch of the Department of the Secretary of State on 12th April 1952.

Even if it were possible for the Commission to accept an inventory prepared by the heirs in 1953 in preference to one prepared by the owner himself in 1940, shortly after the loss occurred, we should still be met by a very serious obstacle. If the later inventory had been duly established in the presentation of the claim made to the United Kingdom Government, it is probable that a much larger award would have been received from that source. In deducting compensation otherwise provided for, the Commission is bound to take into account not only amounts actually received from alternative sources of compensation, but amounts which would have been received if alternative claims had been prosecuted with due diligence. Obviously, therefore, if the Commission were now able to entertain the amended inventory for \$677.00, and to arrive at an award of, say, \$600.00 on that basis, the claimants would be no farther ahead as the Commission would have to take into account the probability that if the same inventory had been presented to the British authorities, an award from that source would probably have been received in the vicinity of \$600.00. That being the case, we should be obliged to deduct \$600.00 from any award now recommended.

There are, however, two points which, I think, would enable the Commission to recommend a modest award in favour of the claimants:

(a) An examination of the original inventory filed by the late John Dodd indicates that the valuations were intended to be the market values, with due allowance for depreciation. I think therefore that a capital award (*gross*) might properly be recommended to the full extent of the original amount claimed, namely \$355.85.

(b) The claimants would be entitled to interest on the capital award from the date of the loss until receipt of the United Kingdom award, and on the balance from then until the date of payment.

I agree with the conclusion of the learned Deputy Commissioner (*Chouquette*) that in view of the smallness of the award, the length of time elapsed, and the unlikelihood of any outstanding claims affecting the Estate of the late John Dodd (who apparently died a widower and intestate), the award may properly be paid directly to the claimants without the intervention of formal administration. Since the claim was prosecuted by the claimant Robert John Dodd on behalf of himself and his brother and sisters, I also consider that the award may properly be paid to him in trust for informal administration...

Dated this 6th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 8976

Re: Strachan

According to her evidence, no insurance was placed on the goods (taken on board not as cargo but allowed as personal baggage) for the reasons, first, that the ship was of a neutral nation, namely Egypt, and secondly, that the premium was practically prohibitive, namely 20%. For what it is worth her evidence is that none of the passengers so far as she understood insured their baggage.

Under all the circumstances, I am of opinion that her failure to insure should be excused . . .

Dated this 17th day of March A.D. 1955.

(Sgd) J. D. HYNDMAN

Deputy War Claims Commissioner

NOTE: Award confirmed by Chief Commissioner 28 February 1957.

CASE No. 9036

Re: Donald H. Bain Limited

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has urged favourable consideration of its claim for reasons alleged to warrant an inference that the goods in question were lost by reason of war operations in Malaya.

So far as the money claim for \$84.50 in respect of an indebtedness alleged to have been due by Jos. Travers & Sons Ltd. is concerned, the learned Deputy Commissioner disallowed this claim as being a matter between debtor and creditor, for which compensation from the War Claims Fund is prohibited by the Rules. I have no alternative but to agree with this conclusion.

I also agree with the learned Deputy Commissioner that the evidence as to delivery, location, and loss or disappearance of the cartons and labels is far from being complete or satisfactory. The fact, however, that the claimant actually paid for the goods in question not only supports the bona fides of the claimant, but is also some ground for an inference that the goods were supplied and delivered to Jos. Travers & Sons Ltd. for use on behalf of the claimant. With considerable hesitation, therefore, I am prepared to infer both that the goods (to the value of \$595.17) were in possession of Jos. Travers & Sons Ltd. on behalf of the claimant and that they were looted or destroyed by an operation of war.

Unfortunately, the claimant, though fully and frequently advised as to the availability of an award in Malaya, did not present a claim to the Malayan War Damage Commission. In such circumstances, the War Claims Rules require that the claimant shall be deemed to have received from that source the amount of compensation which would have been available by prosecution of a claim with reasonable diligence.

Payments made by the Malayan War Damage Commission were determined on the basis of a number of somewhat complicated categories and priorities in relation to the amount provided for payment of compensation. From the information available, however, I think it is safe to infer that by reasonable prosecution of a claim in Malaya the claimant could have secured an award of not less than \$350.00. I would estimate the probable mesne date of such payment at 15th March 1953.

To the foregoing extent I therefore reverse the recommendation of the Deputy Commissioner, and I recommend that the claimant be paid \$595.17 as an award for loss of property in Malaya, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$350.00 deemed to have been received from the Malayan War Damage Commission, with interest adjustment from 15th March 1953.

I recommend that the claim for debt owing by Jos. Travers & Sons Ltd. be disallowed.

Dated this 28th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9037

Re: Purity Flour Mills Limited

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has also been notified, under the provisions of Rule of Procedure No. 20, that I might consider it necessary to reverse the decision of the Deputy Commissioner and recommend disallowance of the claim on the ground that the property in the goods lost had passed from the claimant to the purchaser at the time of the loss.

The claimant has submitted further materials and argument in support of the contention that it should be compensated either for the loss of the goods, or for the loss of the purchase price presumed to have been paid into a bank in Manila.

I note the learned Deputy Commissioner's opinion that it is quite possible that the flour was confiscated in the warehouse by the Japanese before delivery could be made to the consignee. I also note the statement made by the claimant that it has no assurance that the flour was picked up at the docks by the bakery.

By the provisions of the War Claims Rules, the onus is on the claimant to establish that the flour had not been received by the bakery company, or that its loss had been occasioned by an operation of war.

From a letter written by the claimant on 23rd September 1949 it appears that the Estrella Bakery had impliedly admitted receiving the goods, and had claimed that cash in payment for the flour was paid into the bank at Manila just prior to the Japanese invasion. From this situation, and from the dates of departure of the two ships from Vancouver, I think it must be inferred that the flour had been duly delivered to the bakery company before commencement of hostilities. In that case, the claimant would not be the owner of the goods at the time of their loss. Its claim would be in the nature of a debt: (a) against the bakery company if payment had not been made to the bank; (b) against the bank if the bank had received the money and failed to forward it. Claims of that nature do not form the basis of awards under the Canadian War Claims Rules.

The claimant however urges that the failure of the bank to remit the money was due to the seizure of the bank's assets by the Japanese military

authorities, and that the loss was therefore directly due to an operation of war. That cause, however, is not established, and does not appear to be supported by the recent communication received through the Canadian Bank of Commerce from China Banking Corporation, whereby the latter bank expresses its willingness to arrange a settlement of the claim if payment to it by the bakery company can be established.

For the foregoing reasons, I feel constrained to reverse the recommendation of the learned Deputy Commissioner, and I therefore recommend that this claim be disallowed.

Dated this 7th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9041

Re: Trainor

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, as well as a supplementary recommendation, with his reasons therefor.

The claimant, Mrs. Conroy, has been furnished with copies of the Deputy Commissioner's reports and, on review, has presented further materials in support of the contention that the award in favour of Margaret Mary Trainor Conroy should be increased. Her present submissions contend that:

- (a) Her ward's share of the claim originally made by her mother the late Catherine Fisher Trainor should not be subject to deduction of the amount offered by the Government of the United Kingdom;
- (b) The share of her ward's father, the late William Trainor, should be added to her ward's share, and paid to her.

The facts and the circumstances of this claim are as follows:

Miss Catherine Fisher was a passenger on the ill-fated *SS Athenia*, and suffered the loss of personal effects which she valued at \$834.00, and whose value the learned Deputy Commissioner has fixed at \$670.00. Miss Fisher also claimed compensation for loss due to shock, with resultant loss of work and medical expenses, in a total amount of \$1230. For the reasons mentioned by the learned Deputy Commissioner, the claim for personal injury must be disallowed. The only claim under consideration is therefore the loss of the personal effects belonging to the late Miss Fisher. A short time after the *Athenia* disaster, Catherine Fisher married William Trainor. On the 24th of October 1941 Mrs. Catherine Trainor died, at the time of the birth of her daughter Margaret Mary Trainor. On the consent of William Trainor, the daughter Margaret Mary Trainor was adopted on the 14th of April 1944 by Thomas Conroy and her aunt Mrs. Thomas Conroy, nee Margaret Fisher, and thereafter became known by the surname of Conroy. Some short time after the adoption, William Trainor apparently disappeared and, so far as the Commission is able to ascertain he has not been heard of for over seven years.

It appears that Catherine Fisher Trainor died intestate, and it seems to be admitted that her widower, William Trainor, and her daughter, Margaret Mary Trainor Conroy, would be entitled to her estate in equal shares, and would therefore be eligible to receive her award on this claim in equal shares.

On the 13th of November 1947 the British Ministry of Pensions forwarded a cheque for £125 to the order of the estate of the late Catherine Fisher. When

the British Department learned of the death of Mrs. Trainor, the cheque was recalled owing to the fact that no formal grant of administration had been made in respect of her estate. It was, apparently, a rule of the Department that if an *ex gratia* award was in excess of £100 a Grant of Representation must be taken out or resealed in Great Britain by the person entitled to do so under Canadian law. It further appears that the British Department of Pensions subsequently referred the whole question to the British Ministry of Transport and requested authority to pay one-half the total award to Mrs. Conroy as the share of her adopted daughter, the remaining one-half to be held by the Department of Transport in the event that William Trainor might submit a claim at some future date. The Department of Transport agreed to make an *ex gratia* payment of £62.10.0 to Mrs. Conroy as guardian of her adopted daughter, but apparently refused to divide the award, and insisted that the payment be made subject to its acceptance "in full and final settlement of the claim for the loss of the late Mrs. Trainor's effects".

There was probably some degree of default on the part of the present claimant in not complying with the technical requirements of the British Government, however expensive such proceedings might be. On the other hand, the final offer of the Department of Transport was one which Mrs. Conroy could not with propriety accept, as she had no authority to waive the potential claim of her brother-in-law, William Trainor. Although I was at first convinced that the learned Deputy Commissioner had properly deemed the share of the claimant's ward to have been received by her, within the provisions of the War Claims Rules, a detailed examination of all materials now available has led me to the opinion that the claimant properly rejected the offer of the British Government in the form in which it was last made, and that therefore (so far as her ward's one-half of the claim is concerned) the presumption of "satisfaction otherwise provided for" should not apply.

As to William Trainor's share of the claim, there is probably not enough evidence before the Commission to justify a definite inference that he is dead. Even if it could be conclusively presumed that Trainor is dead, there would still be the possibility that he had left a will, or that he had remarried and been survived by issue of a subsequent marriage. The possibility, however, that Trainor is alive, or that his share may have passed to another potential claimant by will or by inheritance of a second family is remote. The preponderant probability is that Margaret Mary Trainor Conroy is now entitled to receive her father's share of the award, and it appears to me that the contrary possibility (especially in view of the smallness of the father's outstanding share) is too remote to warrant the suspension of decision beyond the approaching dissolution of this Commission. I am therefore disposed to recommend that the claimant be paid the share of the award to which William Trainor, if alive, would be entitled, subject to the proviso that the claimant, or her ward after reaching majority, shall be liable to refund such share if William Trainor, or anyone claiming through him, subsequently establishes a valid claim to it.

As to the amount which William Trainor might receive, it seems to me that he would not be entitled to the above mentioned exemption from the presumption of "satisfaction otherwise provided for". Neither he, nor anyone on his behalf, made any claim for his share of the *ex gratia* payment provided by the British Government. He must therefore be deemed to have received one-half the award, or the equivalent of \$251.25.

With the foregoing recommendations I approve the reports of the learned Deputy Commissioner and I recommend that the claimant, Mrs. Margaret F. Conroy, as guardian for Margaret Mary Fisher Conroy, be paid \$670.00 as an

award for loss of property by Catherine Fisher on the occasion of the sinking of the *SS Athenia*, such payment to be in order of Priority No. 3 (a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$251.25 deemed to have been received by William Trainor as his share of the *ex gratia* award made by the Government of the United Kingdom, with interest adjustment from 15th December 1948. The capital amount of \$83.75 and the interest relative to William Trainor's potential share of the claim should be received subject to the aforesaid proviso for refunding; but, in view of the unlikelihood of such an event, I would not recommend the imposing of any specific trust to that effect.

For the reasons mentioned by the learned Deputy Commissioner, I recommend that the claim for personal injury resulting in shock, loss of wages, and medical fees be disallowed.

Dated this 31st day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9046

Re: Pike

By my report of 28th January 1956, the claim for compensation for pecuniary loss caused by the death of the claimant's son George Wallace Pike was reserved for later consideration.

I accordingly took the evidence of the claimant, and of his daughter Mrs. Alethea Guy at Halifax today.

At the time of the "*Caribou*" disaster, the claimant was a blacksmith at Port aux Basques, Newfoundland. His son George had been apprenticed with him for about three years, and received no regular wages beyond his board, clothing, and spending money. He was at that time about 24 years old, was single, and had no intention of getting married. The consideration for his remaining at work with his father was the prospect of his taking over the business at his father's retirement.

After the son's death, the claimant had to replace his labour by hiring two successive helpers, Sammy Lillington and William Francis. He paid them from 35 to 40 cents per hour for ten-hour days until his retirement, at age 72, about three years later, when he sold out, or "sacrificed" his gear and tools to Francis. Allowing for idle hours and other such contingencies, I think it would be fair to estimate that the claimant paid Lillington and Francis \$2,500.00 over the three-year period. If his son had not been drowned, he probably would have been able to procure similar help for about one-half that outlay. On such a basis of computation, the claimant incurred a pecuniary loss of \$1,250.00 by the death of his son, and was his dependent to that extent.

The capital sum of \$100.00, which the claimant received from the War Claims Fund as compensation for loss of his son's personal belongings, is a factor which must be taken into account in arriving at a balance of gains and losses for the injury sustained by the death. It must therefore be deducted.

It is also true that the claimant sold out his tools and gear to Francis, whereas he might have given them to his son had he lived. On the whole, however, the latter arrangement would probably have had other pecuniary advantages which the sale to Francis lacked. As to the proceeds of a \$1,000.00 life insurance policy, the War Claims Rules prescribe that such a receipt is not deductible from a death claim.

I therefore find that the claimant suffered a compensable pecuniary loss by the death of his son George Wallace Pike at the sinking of the SS "Caribou", computed and estimated as follows:

Payments to Lillington and Francis	\$2,500.00
Less probable cost of same services from son	1,250.00
	<hr/>
Net increase in cost	\$1,250.00
Less capital compensation for personal belongings	100.00
	<hr/>
Net pecuniary loss	\$1,150.00
	<hr/>

I accordingly recommend that the claimant be paid \$1,150.00 as an award on the death claim, such payment to be in order of Priority No. (1-2), and to bear simple interest from an estimated mesne date of 15th April 1944 at 3% per annum.

Dated this 20th day of March, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9056

Re: Barzeele

This is a claim for compensation for maltreatment of the claimant while a prisoner of war in Europe.

The record discloses that F/O Barzeele was shot down in Belgium on May 13, 1944. He was not captured by the enemy but made contact with the Belgian underground and managed to get back to the United Kingdom on September 10, 1944.

In the circumstances the claimant was not at any time a prisoner of war and can not, therefore, have suffered maltreatment as a prisoner of war. This claim must accordingly be disallowed.

January 27, 1955.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: Disallowance confirmed by Chief Commissioner 10 March 1955.

CASE No. 9101

Re: Balfour Guthrie (Canada) Limited

... On the basis of the rule as to the balance of probabilities, it may be safely found that the goods of the claimant did arrive safely in Hong Kong and were unloaded there. None of this claimant's goods were ever located and, as Hong Kong was in fact occupied by enemy forces, looting may be presumed, as set out at page 57 of the Report of the Advisory Commission. The claimant was unable to have the goods transhipped to Vancouver because of the conditions of war impending in the Far East.

The evidence further discloses that the goods were insured by the claimant but nothing was recovered by way of insurance due to the fact that the 15-day period of waiting transhipment at Hong Kong had expired. In the light of

evidence in this and other cases, the claimant could not have protected itself by insurance after the goods arrived at Hong Kong . . .

Dated this 16th day of July A.D. 1956.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

NOTE: *Award confirmed by Chief Commissioner 8 November 1956.*

CASE No. 9107

Re: McKay

F/L McKay was shot down in Holland on May 25, 1944 but successfully evaded capture for a period of seven months at the end of which his friends in the Dutch underground managed to smuggle him out of Holland and he was returned to England on December 30, 1944. These facts have been confirmed from official sources.

I have no doubt that F/L McKay experienced considerable hardship during the seven months that he was with the Dutch underground. The fact remains, however, that he was not at any time a prisoner of the Germans and could not therefore have been maltreated by them. I should add that compensation for maltreatment has been provided only for those Canadians who were prisoners of war or were interned by the enemy during World War II.

Such is not the case here and F/L McKay himself recognizes the fact. He has submitted a claim simply on the ground that, although he successfully evaded capture by the enemy he was officially recorded during the period as a prisoner of war. It is with regret that I am obliged to recommend that the claim be disallowed.

Ottawa, Ont. February 15, 1955.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: *Disallowance confirmed by Chief Commissioner 10 May 1955.*

CASE No. 9128

Re: T. Eaton Company Limited

This application was heard in Toronto on the 8th of March, 1955, in the presence of Messrs. H. F. McMullen and C. M. Beattie, respectively counsel and secretarial officer for the applicant Company; Mr. Jean de C. Nicol acted as counsel for the Commission.

The applicant is a Canadian company with head-office in the City of Toronto.

By 1945 the claimant was still tenant of office premises known as 72-74 Zimmerstrasse in Berlin, Germany, where it kept office furniture, fixtures and equipment; it also owned at that time additional furniture stored with "Intra Transport" at 18 Princess Street in that same City. The office premises were destroyed during an air raid on the 2nd of February, 1945, and the warehouse at 18 Princess Street met with the same fate in April of 1945; as a result of those two air raids the applicant lost all its belongings in those establishments and the loss on that score has been estimated at \$5,000.00. The applicant carried insurance which did not include war risk and no compensation has been received touching this loss; a claim is now made for the amount aforesaid and in my opinion has been satisfactorily established.

The applicant further claims the sum of \$13,532.94 for merchandise purchased in six different European countries; it is alleged that this merchandise was paid for by the applicant through its London and Paris offices but, owing to war operations, was looted or destroyed with a resulting complete loss for the claimant. The claim represents 26 purchases in France amounting to \$5,607.85 and paid for between the 7th of December, 1939, and the 13th of June, 1940,—2 in Switzerland for \$4,233.12 and paid on May 1st, 1940,—24 in Germany for \$3,064.12 and paid between the 1st of June and the 31st of August, 1939,—3 in Austria for \$67.54 and paid between the 12th of May and the 31st of August, 1939,—2 in Norway for \$132.60 and paid between the 28th of October and the 7th of December, 1940,—and lastly 2 in Poland for \$427.71 and paid between the 24th of August, 1939, and the 25th of August, 1940. A breakdown of those payments shows that \$3,536.68 were paid before the declaration of war against Germany (September 3rd 1939) and the balance of \$9,996.26 was paid afterwards.

It was stated at the hearing that all these goods were purchased in the normal course of business for shipment to various sea ports; they were paid for at the various factories and the contract of purchase and sale was complete once the goods had been delivered to a common carrier. It was further stated that all these goods were delivered for inland transportation but never reached sea. This statement is consistent with the contents of a letter written on the 15th of March, 1955, by the London Office of the applicant to the effect "That suppliers are instructed to forward the goods to shipping ports to the order of our Shipping Agents and to advise such Agents details of case numbers, contents, value etc."; it is further pointed out in that letter "that the payment dates above-referred to might well have been the dates of the Financial Statement of the applicant which sometimes are a week or ten days after the date of payment to the Supplier." It appears that in the case of contracts entered into on *f.o.b.* terms, the same procedure is followed except that the Shipping Agents debit back to the Supplier the inland carriage and all *f.o.b.* charges incurred at the port.

I gather, from all the material submitted, that payments were made by the Shipping Agents to the various Suppliers upon proof of delivery of the merchandise to the inland carriers and that those Shipping Agents in turn sought credit therefor from the Buying Offices of the applicant Company. The statements of the claimant are no doubt prepared on the strength of the returns with supporting material (such as invoices, shipping bills, bills of lading etc.) made by the various Shipping Agents; I think that this Commission is in turn entitled to these same returns in order to adjudicate upon this claim. I do not think that a bare statement of the loss is sufficient under the circumstances to seek an award from this Commission and I am unable to make a recommendation with respect to the lost or destroyed merchandise.

I therefore recommend for the applicant Company a property loss award of \$5,000.00 together with simple interest thereon at the rate of 3% per annum as of the 1st of January, 1946.

March 26, 1956.

(Sgd) C. W. A. MARION

Deputy War Claims Commissioner

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review the claimant has furnished additional materials to support its claim for loss of sundry merchandise purchased in several European countries

and looted or destroyed in process of transit. The additional proofs go to establish, with reasonable certainty, the loss of such items in a total amount of \$10,702.92.

The claimant now withdraws the balance of its claim of \$13,532.94 by reason of inability to produce vouchers in support of the balance. I am of the opinion that a compensable loss of \$10,702.92 has been established on this branch of the claim.

As to compensation otherwise provided for, the claimant was apparently not eligible to present a claim under the West Germany Equalization of Burdens Law, which precludes claims by corporate bodies. In the case of the goods lost in course of transit, the amount now claimed is the net sum remaining after deduction of compensation received through a claim made against the carrier. I am of the opinion that there is no other channel through which the claimant could obtain any further alternative compensation.

I would therefore approve the Deputy Commissioner's recommendation for payment of \$5,000 for office equipment lost in Germany and I would add a recommendation for payment of \$10,702.92 as the net established loss in respect of the goods in transit.

I therefore recommend that the claimant be paid \$15,702.92 as an award for loss of property in Europe, such payment to be in order of Priority Nos. 3(a), 3(b), 4(a), 4(b) and 5, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 19th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9131

Re: Lindsay

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

On review of the claim for loss of personal property, I find that the articles lost as itemized and valued by the claimant, amount to a total of \$1,067.00. An examination of the list, in comparison with circumstances of similar cases, leads me to the opinion that the Deputy Commissioner did not deduct a sufficient allowance for depreciation of consumer goods as has been done by the Commission in similar cases. I would amend the learned Deputy Commissioner's finding by re-assessing the reasonable market value of the personal property lost at \$850.00, instead of \$1,067.00.

In lieu of causing to the claimant a further delay which would be involved in a formal notice under Rule of Procedure No. 20, I would state that this portion of my recommendation may, at the option of the claimant, be treated as an interim award, and subject to further revision.

Having reviewed the report of the Deputy Commissioner, I approve the same with the foregoing reservation, and I accordingly recommend that the claimant be paid:

- (a) \$475.00 as an award for disbursements occasioned by personal injuries sustained by the claimant at the sinking of the SS "*Athenia*", such payment to be in order of Priority No. (1-2) and to bear simple interest from 1st August 1947 at 3% per annum;

- (b) \$850.00 as an award for loss of personal property on the same occasion, such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$603.00 received from the Government of the United Kingdom, with interest adjustment from 1st December, 1947.

Dated this 24th day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9167

Re: Duckworth

Mr. Duckworth claims the award of compensation for maltreatment for which his son, A-22158, Private William DeLong Duckworth, Essex Scottish Regiment, would have been eligible had he lived.

The record discloses that Private Duckworth was captured at Dieppe on August 19, 1942, while a prisoner of war. It appears that he had been wounded in the back when captured and that septicemia subsequently set in. Altogether he had been a prisoner of the Germans for a period of about 88 days during most or all of which he was in hospital, and there is nothing on the record to suggest that he was maltreated during this period.

Accordingly, owing to the relatively short period during which the deceased was in custody and the prima facie absence of evidence of severe mistreatment as a prisoner of war, I am obliged to hold that the general presumption of the fact of serious maltreatment recognized in the case of prisoners of war in Europe by the Report of the Chief War Claims Commissioner has in this case been rebutted.

In these circumstances, and with regret, I am obliged to recommend that the claim be disallowed.

February 23, 1955.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: *Disallowance for award approved by Chief Commissioner, 29th November, 1955.*

CASE No. 12(IT.) (9169)

Re: Kempler

This claim was heard by me in Montreal on 30th September 1954, applicant being present and sworn. Mr. Saul Hayes, Q.C., barrister, appeared on behalf of the applicant.

Claimant was a citizen of Austria, and is now 82 years of age. In 1938, with his wife, he left Vienna with the object of coming to Canada, first going to France, and arriving in Canada in 1940. According to certificate from the Department of Citizenship and Immigration, he acquired Canadian citizenship on the 18th October 1945.

According to the evidence, prior to his departure from Vienna, he had arranged to have packed in a lift-van all his personal property consisting of 140 pounds of sterling silver goods, cases containing a complete service of table utensils for 24 persons, complete sets of tea and coffee of sterling silver, objects of art, pictures, fourteen Persian rugs, fine embroidered linen, accounting

machine, various articles of furniture made of mahogany, Afrikan rose, and other precious woods, and a number of other items set out in detail on the list filed with the Commission, and according to his affidavit of the 8th December 1945, the whole of the value of \$15,000.

On November 26th 1953, claimant increased the value of the said goods to \$25,000, plus interest and storage charges.

Again on April 15th, 1954, the claim was increased to \$27,162.

The said lift-van was forwarded to Lloyd-Triestino at Trieste and placed in storage under No. 519 and bearing mark sign UNS CESS 80002 EXPORT D with instructions to send the said lift-van to claimant's order at Montreal. Owing to transportation difficulties, the lift-van was never sent to Canada but remained in Trieste, and according to the evidence, was sequestered by the Italian Government on 11th May 1943. Subsequently, on the 22nd March 1944, the lift-van was seized by the German authorities and sent by them apparently to Berlin or some other part of Germany and has never since been heard of or recovered.

This claim is made by virtue of the Peace Treaty with Italy ratified on the 15th September 1947.

The first question for decision is that of eligibility of applicant to claim under the Treaty, the matter being dealt with at page 10 and 11 of the Report of the Advisory Commission.

The claimant is of the Jewish race, and by virtue of a German decree, of July 2nd, 1938, all citizens of Austria were made citizens of Germany, and by the so-called Eleventh Decree of Germany, dated 25th November 1941, all emigrated Jews were deprived of their citizenship, and all their property and possessions expropriated by the German Government. It is clear, therefore, that the claimant herein came within the provisions of the two-mentioned decrees and became stateless.

The applicant claims to have been a United Nations National and, therefore, qualified to claim under the Italian Treaty. On page 10 of the Advisory Commission Report, it is stated as follows:

"The main claims provisions of interest to Canadians are to be found in Article 78 of the Treaty of Peace with Italy. In order to qualify for compensation a claimant must be a United Nations National as defined in paragraph 9(a), that is to say he must have been a national of one of the United Nations both on September 3, 1943, which was the date of the armistice, and on September 15, 1947, which was the date of the ratification of the treaty, or he must have been treated as enemy under the laws in force in Italy during the war."

It is under this last sentence applicant bases his claim. The fact that the Italian Government seized his goods, which fact has been fully established by the document on file, would seem to me sufficient evidence to establish that he was treated as an enemy of Italy and, therefore, should be classified as a United Nations national within the meaning of the Treaty.

A similar case on all fours with the facts in this case, that of a Mrs. Hilda Menkes, came before the American-Italian Conciliation Commission in Rome. The Treaty with the United States was in all material respects similar to that of the Canadian Treaty. It was held by this Commission that the chattels belonging to an American Jew and deposited in the local "Magazzini Generali" were to be considered as enemy goods. The Commission decided the said Menkes was a United Nations National and eligible to claim in respect of the loss in Trieste during the war, of the personal property owned by her. I am of opinion that said decision should be followed here.

It would appear to me, therefore, that the claimant's eligibility under the interpretation of Article 78, paragraph 4-D of the Peace Treaty with Italy has been satisfactorily established.

There remains therefore the question of the amount to which applicant should be entitled.

I find considerable difficulty in coming to a decision on this point.

I formed a high opinion of the honesty and sincerity of the applicant as well as of his wife, daughter and son-in-law, all of whom testified at the hearing. Prior to the war, they lived in comfortable, if not luxurious circumstances in Vienna. Applicant was a prominent member of the Jewish Community there, having been Vice-Chairman of the Jewish Congress in Vienna, as well as being an architect, civil engineer, and official valuator employed by the Courts in such matters.

I have no reason to doubt the existence and ownership as well as the loss of the goods, the subject of the claim.

Under the Italian Treaty, provision is made for the restoration to the claimant of property in Italy and, where it cannot be returned, or where the claimant, as a result of the war, has suffered a loss by reason of injury or damage to property in Italy, for compensation by the Italian Government in lire to the extent of two thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. Thus the claimant is safeguarded against loss in the purchasing power of the lira. Compensation is not to be subject to any form of levy or taxation, but is subject to foreign exchange control. Compensation may also be claimed in respect of loss or damage due to special measures applied to the property of a United Nations National during the war and which were not applicable to Italian property. All reasonable expenses incurred in Italy in establishing claims, including the assessment of loss or damage, are to be borne by the Italian Government. Another important provision makes these compensation provisions the liability of the Italian Government, where the loss or damage was sustained in ceded territory or in the Free Territory of Trieste. The settlement of disputes arising out of Article 78 is dealt with in Article 83, which provides for reference to a Conciliation Commission.

As I understand it the basis of valuation is what it would cost to replace the goods lost in Italy or possibly Austria. The applicant bases his claim on the cost in this instance in Montreal. With this I cannot agree. Consequently there is no evidence of what it would cost to replace the goods in Italy or Austria. The sum originally claimed was \$15,000 although the later amounts claimed were \$25,000 or \$27,000.

In the absence of evidence of replacement cost in Italy or Austria, I am inclined to believe that the \$15,000 first claimed is more nearly what should be considered the replacement value and loss.

I am therefore of opinion that an award of \$10,000 being two thirds of the loss as provided in the Treaty, should be considered as fair and reasonable.

Calculated in lira the amount is therefore 6,455,778 lire.

I therefore recommend an award in favour of the applicant of \$10,000 which, converted into lira, as of October 1952 amounts to 6,455,778 lire.

I would also allow for expenses provided for in the Treaty, in establishing the claim, the sum of 30,000 lire.

Dated this 21st day of December A.D. 1954.

(Sgd) J. D. HYNDMAN
Deputy War Claims Commissioner

Deputy Commissioner Hyndman, to whom this claim was referred, has reported to me his findings and recommendation, with his reasons therefor.

Upon reviewing the report of the Deputy Commissioner, I am of the opinion that the claimant's eligibility, and his entitlement to the award recommended under the *War Claims (Italy) Settlement Regulations* have been duly established.

I therefore approve the report of the Deputy Commissioner without variation, except as mentioned below, and I accordingly recommend that the claimant be now paid, pursuant to the *War Claims (Italy) Settlement Regulations*, the following amount:

Two-thirds of the property loss of \$15,000.00, i.e. \$10,000.00.

This two-thirds, as of 27th October 1952, will amount to . . 6,455,778 lire.

Notwithstanding payment and acceptance of the award hereby approved, this recommendation is subject to further review at the instance of the claimant, particularly in respect of the Deputy Commissioner's award of 30,000 lire for expenses, which I feel obliged to disallow for lack of evidence that any part of the expenses was incurred in Italy.

Dated this 4th day of February A.D. 1955.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

CASE No. 9177

Re: Warren

This application for property loss was heard in Windsor, Ontario, on the 3rd of March, 1955, in the presence of the claimant, her counsel Mr. G. J. Karry and Mr. Jean de C. Nicol as counsel for the Commission.

It must be determined in the first place if the applicant was a Canadian at any relevant time so as to be entitled to claim under the Rules.

The applicant was formerly Edith Josefine Lappert; she married one Walter Henrich Edward Weiss in London, England, on the first of March, 1943. In the month of March, 1944, or a short time thereafter, her husband officially changed his name to "Walter Henry Edward Warren" and at the same time the claimant changed her name to "Edith Josephine Warren".

The applicant's husband at the time of marriage as aforesaid was a naturalized Canadian citizen who was then serving in the Canadian Army Overseas; consequently, the applicant acquired the status of a British subject at marriage.

Her husband had settled down in Kingsville, Ontario, before enlisting and he immediately returned there, after his discharge from the Army, where he has lived ever since with his wife, the applicant.

Under the circumstances, I find that the applicant, in addition to becoming a British subject, also acquired a domicile in Canada as of the first of March, 1943, entitling her to claim under the Rules as of that date.

Dated this 13th day of May A.D. 1955.

(Sgd.) C. W. A. MARION
Deputy War Claims Commissioner

This application for a property loss award was heard in Windsor, Ontario, on the first of March, 1957, in the presence of the claimant, her husband, her counsel Mr. G. J. Karry and of Mr. Jean de C. Nicol of counsel for the Commission.

Following a previous hearing at the same place on the 3rd of March, 1955, a Recommendation was made on the 13th of May, 1955, whereby it was adjudged that the claimant had become a British subject with Canadian domicile as of the first of March, 1943.

A claim is hereby made for losses, under the four headings of (1) Bank Accounts (2) Shares in certain Corporations (3) Mortgage security and (4) Damaged property, alleged to have taken place in Czechoslovakia.

The applicant, formerly Edith Josefine Lappert, is the only child of Philip Lappert and Hedwig Lappert; her mother died in 1918 and her father was deported in 1942 during racial persecutions to be since unheard of. The applicant had an unmarried uncle, Dr. Max Lappert, who died in a concentration camp on the 16th of December, 1941, and who left two unmarried sisters, namely Anna Lappert and Gisela Lappert; these two ladies were also deported in 1942 to be since unheard of.

Under the circumstances Philip Lappert, Anna Lappert and Gisela Lappert may be taken to have died as of the year 1949.

It appears that Philip Lappert and Dr. Max Lappert died intestate but Anna Lappert and Gisela Lappert each left a holograph will dated February 16th, 1941. One can gather from these two wills that the above-mentioned four persons were the only members of that family. Each one of the two testatrices left all her property to the other three members of that family and, in default of them, to her niece Edith, the applicant herein.

I am assuming for the purpose of this decision that the parents of Dr. Max Lappert were no longer living in 1941, that the relevant law of the domicile provided for descent of this man's property unto his brother and two sisters, that holograph wills were recognized under the same law and that an only child became entitled to all the estate of a surviving parent dying intestate.

As a result of these assumptions, the estate of Dr. Max Lappert passed in 1941 unto his brother Philip and his sisters Anna and Gisela; later the estates of these two ladies, through the two wills aforesaid, devolved upon the claimant who also inherited from her father, Philip Lappert. In the final result, the applicant eventually became the sole heiress of the four persons just above-mentioned.

However, Philip Lappert, Anna and Gisela Lappert were admittedly never Canadians at any time and therefore never had any possible claim against the Canadian funds; they could not pass any such right to claim to the applicant through their presumed deaths in 1949. Deputy Commissioner Hyndman held in the Seddon case, numbered 2135, that "It is clear that Mr. Seddon, not being at any time a Canadian citizen, would have no claim against the Canadian funds and of course could not, by will, confer any better title or right to a third person. In other words, as beneficiary under the will, Mrs. Seddon's claim is no greater than that of her husband." This decision rendered on the 12th of February, 1954, was confirmed without variation by the Chief Commissioner on the 17th of August, 1954.

Before this case comes up for review before the Chief Commissioner, the applicant might be able to establish the definite dates of death of Philip, Anna and Gisela Lappert (or of any of them) so as to indicate that after the first of March, 1943, when she became a Canadian citizen, but before the dates giving

rise to at least some parts of her claim, she was seised of some property coming under the three headings of (1) Bank accounts (2) Shares in certain Corporations and (3) Mortgage security. In the event of the claimant being able to establish the relevant law of descent to be as above set out and the definite dates of deaths, there will be an opportunity for her to further argue the case in the light of that additional information when it comes up for review.

I must however at this stage dismiss the claim insofar as it relates to the three headings just above-mentioned as one part thereof has reference to losses occurring before the first of March, 1943, and the remaining part concerns losses to property acquired not sooner than the year 1949 through the presumed deaths in that year of the three persons above-mentioned.

The Bank accounts confiscated by the Germans consist of (1) eight held by Dr. Max Lappert (five of which were taken before March 1st, 1943) and three in the aggregate amount of K 242,827.00 were taken on the 6th of May, 1944, and on the 27th of June, 1944, (2) two held by Gisela Lappert, one of which was taken before March 1st 1943, and the other in the sum of K 149,215.00 on the 6th of March, 1943, and, (3) seven held by Anna Lappert, six of which were taken before March 1st 1943 and one in the sum of K 89,950.00 on the 8th of March, 1943.

Some 42 shares, registered in the name of Dr. Max Lappert, in three different Corporations were confiscated by the Gestapo in 1941; the value of those shares is unknown.

A mortgage in the sum of K 160,000.00 standing in the name of Anna Lappert against property known as NC 787 of the land registry of Turn (registration number GE. Z1.1132) is said to have been confiscated by the Germans on the 1st of March, 1943; a post card photograph of the mortgaged premises has been filed.

The fourth or last item of the losses, with respect to a damaged property stands on a different footing. The claimant obtained a one-third interest in that property in 1926 from her maternal grand-mother, Amalia Pollak; she was then living in Vienna, Austria, and was 20 years old, having been born on the 25th of February, 1906. The other two-thirds were held by her two step-uncles, Carl Pollak and Emil Pollak. The property was known as number 545, Lazenska Street, in Teplice-Sanov, Czechoslovakia. An apartment building stood on that property; the building, consisting of 9 small apartments and 2 stores, had seven windows to the right of its central entrance instead of four shown on the photo concerning the mortgaged premises. All outgoings with respect to that property were looked after by the claimant's uncle, Dr. Max Lappert. The building was heavily damaged through allied bombardment on the 5th of May, 1945. The applicant places her loss at K 100,000.00 (\$3,440.40 in Canadian currency as of June 30th, 1939. There is on file a letter dated June 4th, 1947, to Mr. Warren written on behalf of the Local National Committee Lazne Teplice-Sanov in connection with that property; the letter indicates that the building was damaged as aforesaid and was later, to wit on or about August of 1946, demolished by the public authorities in that locality. I feel that the applicant has suffered a loss, as a result of the bombardment, which I assess at \$2,500.00.

Therefore in the final result I recommend for the applicant a property loss award of \$2,500.00 together with simple interest thereon at the rate of 3% per annum as of the 1st of Jan. 1946.

Dated this 13th day of March, A.D. 1957.

(Sgd) C. W. A. MARION

Deputy War Claims Commissioner

This claim was heard by me in Ottawa on the 6th March, 1959. Mr. G. Karry, Barrister of Kingsville, Ontario, represented the claimant.

The claim was originally heard by Deputy Commissioner Judge Marion who awarded \$2,500 in respect of loss by war action of a building known as number 545 Lazenska Street, Teplice-Sanov, Czechoslovakia, owned personally by Mrs. Warren but dismissed a claim for certain bank balances, corporation shares, and a mortgage debt, reserving the right to adduce further evidence with regard to her ownership thereof at the relevant times.

Judge Marion found that Mrs. Warren had acquired British status with domicile in Ontario, as of the 1st March, 1943, with which I agree.

In consequence, applicant became qualified to claim for losses due to war action, which occurred after said date.

At the time of said hearing there was lack of proof of the date of death of Mrs. Warren's father and aunts, especially prior to the date of claimants acquiring British status. In other words lack of proof of her inheritance of the properties claimed for at the time of the loss. I am satisfied that she was the sole inheritor of any property left by her said relatives, namely, Philip, Dr. Max, Miss Anna, and Miss Gisela Lappert.

Apart from being the sole survivor of her father, uncle and aunts, there is the fact that the said Anna and Gisela Lappert executed practically identical holograph wills, both dated 16th February, 1941.

Following is a copy of the will of Anna Lappert:

"My last Will.

- (1) As heirs of my estate I am naming my brothers Philipp Lappert, Vienna 7, Neustiftgasse 31 and Dr. Max Lappert and my sister Gisela Lappert both of 22 Frindttrasse, Prague 7, on equal parts. Should one of them be dead, or not wanting to inherit or not be in a position to inherit, then his or her part shall be divided equally among the rest of them. Should none of them be alive, or not want to inherit nor be able to inherit, then falls my estate to my niece Edith Lappert. Should same not want to inherit, or be unable to inherit or be dead, then I declare Helga Barwinek of Turn, near Teplice-Sanov, Gottfried Kelerstrasse 34, daughter of Mrs. Charlotte Barwinek as heiress.
- (2) Should my niece Edith Lappert be the heiress in case of the death of my brothers and sister, but should die without descendants or husband, without having been able to dispose of the from me inherited estate, then I declare Helga Barwinek as after-heiress of the estate or the rest of it, which would be left after the death of Edith Lappert.

Signed: Anna Lappert

Prague, February 16th, 1941"

According to the affidavits of Franz Goldner and Jaroslav V. Bizek, both doctors of law, who practiced law in Czechoslovakia and Austria respectively, in circumstances such as in this case, Mrs. Warren would inherit all the property of said relatives, taking effect immediately following their death.

They also testify in their affidavits that holograph wills at their respective dates were legal and effective under the laws of Czechoslovakia and Austria.

If, as a matter of fact, said relatives of claimant died prior to her acquiring British status, then she did become the owner, either by descent, or under said wills, of all the properties of said relatives at the date of their deaths.

As to what happened to these unfortunate people, the facts are set out in Judge Marion's recommendation of 13th March, 1957, as follows:

"The applicant, formerly Edith Josefine Lappert, is the only child of Philip Lappert and Hedwig Lappert; her mother died in 1918 and her father was deported in 1942 during racial persecutions to be since unheard of. The applicant had an unmarried uncle, Dr. Max Lappert, who died in a concentration camp on the 16th of December, 1941, and who left two unmarried sisters, namely Anna Lappert and Gisela Lappert; these two ladies were also deported in 1942 to be since unheard of.

Under the circumstances Philip Lappert, Anna Lappert and Gisela Lappert may be taken to have died as of the year 1949."

At the hearing before Judge Marion there was in fact no proof of the death of said relatives, except that of Dr. Max Lappert who died 16th December 1941, but since then claimant produced judgments or orders of the District Court for Civil Law Cases in Vienna which under paragraph 21(7) of the Death Declaration Law 1950, declared in the case of Philip Lappert, that he did not survive the 21st January, 1942, and in the case of Gisela Lappert and Anna Lappert in the Peoples Civil Court of Praha, Bench 34, that they both died on 4th February 1943.

The original and copies of these orders or judgments are on the record.

I am also satisfied that Mrs. Warren was the only child of Philip Lappert and eventually became the sole heir of her father, uncle, and both aunts.

I am inclined to regard the finding of the Austrian and Czechoslovakian Courts sufficient to conclude that the father and aunts of Mrs. Warren should be considered deceased prior to the 1st March 1943, the date of her becoming a British subject with domicile in Canada, on which date she married her husband who was at the time an officer in the Canadian Army, naturalized in Canada in 1930, and maintaining domicile in Canada ever since.

At the date of the orders, Austria and Czechoslovakia were independent countries, friendly with Canada. I think it should be presumed that the Courts of these Countries were clothed with jurisdiction and competent to properly adjudicate on the matters before them. Although perhaps we are not bound to accept their findings, nevertheless on the principle of comity of nations, our Courts should respect their decisions.

Again I think that such Courts, being closer to the various incidents and circumstances of the war, should be regarded as peculiarly fitted to make such decisions or presumptions, although the very fact of death was unable to be established. It was nevertheless a finding of fact which I am of opinion should be accepted.

It remains, therefore, to consider the value of losses claimed for.

A fairly lengthy list of bank balances and shares are set forth in the documents filed.

In the case of Dr. Max Lappert I find that all the bank balances with the exception of three, were confiscated by the Germans in the year 1941, and for which no claim is now made.

The said three balances were as follows:

1. Zemska Banka pro Cechy-Prague	K 118,624.00
2. Zemska Banka pro Cechy	18,030.00
3. Postovini Sporitelna v Praze	106,173.00

Items one and two above were confiscated on the 27th June, 1944, and three, on the 6th May, 1944.

In the case of Miss Gisela Lappert, of two accounts, one for K 7,185 in Zemska Banka pro Cechy, Prague, was confiscated on the 15th February 1943, prior to applicant becoming a British subject, and the other in Zevnostenska Bank in the amount of K 149,215, confiscated on 6th March, 1943, that is after applicant obtaining British status.

In the case of Anna Lappert, I find that all the bank accounts involved were confiscated prior to 1st March 1943, except a balance of 89,950 Kc. which was confiscated on the 8th March, 1943.

In the case of shares in corporations held by Dr. Max Lappert, I find that all of these were confiscated in 1941.

A summary of bank balances confiscated after the 1st March, 1943, that is subsequent to the date of Mr. Warren becoming a British subject domiciled in Canada are as follows:

Dr. Max Lappert	K 118,624	
	18,030	
	106,173	242,827
Miss Gisela Lappert		149,215
Miss Anna Lappert		89,950
		<hr/> K 481,992

In addition to the above amounts, applicant claimed interest since the end of the war which, however, cannot be allowed under the Rules of the Commission.

The said bank balances have been authenticated by letters from the several banks mentioned which I am of opinion should be accepted as accurate and true.

Calculating the value of the above sum of K 481,972 in terms of Canadian dollars as at 30 December 1949, the value of the Kronen being .0220 cents to the dollar, the amount in Canadian funds is therefore \$10,603.

There is a further claim for a mortgage of 160,000 K held by Miss Anna Lappert, which is alleged to have been confiscated by the Germans, but I am unable to find on the record the date of seizure.

However, it seems that nothing was collected by the German authorities, for it is stated that it was taken over, after the war, by the then Government of Czechoslovakia. Under the circumstances, I do not think a valid claim thereto has been established and should be disallowed.

I am satisfied no compensation has been received by applicant or any other person on her behalf.

I therefore recommend an award of \$10,603 in favor of the claimant in addition to \$2,500 heretofore awarded by Deputy Commissioner Judge Marion, together with simple interest at the rate of 3% per annum on each of said sums from the 1st January 1946.

Dated this 17th day of March, A.D. 1959.

(Sgd) J. D. HYNDMAN
Deputy War Claims Commissioner

Deputy Commissioner Marion has submitted to me a report dated 13th May 1955 in which he made a finding to the effect that the claimant became a Canadian, in the sense of a British subject with common law domicile in Canada, as of 1st March 1943, and has retained Canadian status ever since.

Subsequently, on 13th March 1957, the same learned Deputy Commissioner submitted a further report, in which he recommended payment of \$2,500.00 for damage caused to tangible property of the claimant in Czechoslovakia by operations of war. In the same report, he recommended, tentatively at least, disallowance of other branches of the claim relating to confiscation of bank accounts, shares in corporations, and a mortgage security, mainly on the ground of uncertainty as to dates at which the claimant had inherited such securities through the death of relatives.

After being furnished with a copy of Deputy Commissioner Marion's report, the claimant was able to furnish additional evidence bearing on the death of her relatives, and an additional hearing was therefore arranged before Deputy Commissioner Hyndman. Pursuant to the additional hearing, and after careful consideration of the evidence, Deputy Commissioner Hyndman submitted his report dated 17th March 1959, in which he found that after her acquisition of Canadian status on 1st March 1943 a number of bank balances which the claimant had previously inherited were confiscated by the Nazi authorities in Czechoslovakia, and that such confiscation inflicted on the claimant a compensable loss, which he assessed at \$10,603. The Deputy Commissioner at the same time recommended disallowance of claim for confiscation of a mortgage, as there was no evidence of the date, circumstances, or effect of its seizure. He also recommended disallowance of claim for shares in corporations, as these were found to have been confiscated in 1941 before the claimant became a Canadian.

I agree with the findings of Deputy Commissioner Hyndman as to the presumed dates of death of the claimant's relatives, as to her inheritance of the bank balances from them, and as to the fact and date of the confiscation. But, having followed these claims carefully through the various stages of their processing and adjudication, I entertained considerable doubt as to whether the confiscation amounted to an operation of war. The War Claims Rules require that loss or disappearance of tangible goods by confiscation by an enemy government, must have been effected "on the ground of the enemy character of the Canadian owner" in order to constitute a compensable loss. The evidence leads to the inference that the Nazi authorities could not have known at the time that the present claimant was the owner of the bank accounts, which they confiscated, and it cannot therefore be considered that the confiscation was carried out because of her enemy character as a Canadian.

I am now of the opinion, however, that such a requirement does not apply to confiscation carried out, as in the present case, by a regime which was never recognized by Canada as the *de facto* government of the country of *situs*. Such confiscation seems to be analogous rather to theft or looting in an area occupied by an enemy, or an ally of an enemy, and I have therefore reached the conclusion that it gives rise to a compensable loss within the meaning of the definition set forth on p. 57 of the Report of the Advisory Commission on War Claims.

The claimant has recently submitted a statutory declaration indicating that she incurred abroad expenses in the sum of \$175.77 in connection with the establishment of the dates of death of her relatives. There would also appear to have been a number of items of expenditure incurred in the preparation of other aspects of the claim. On consideration of the question of expenses, I would recommend allowance of a lump sum of \$225.00, it being understood that no legal or other expenses incurred in Canada can be reimbursed out of the War Claims Fund.

With the foregoing addition of expenses, I approve the substantive recommendation of Deputy Commissioners Marion and Hyndman.

I therefore recommend that the claimant be paid:

(a) \$13,103.00 as an award for loss of property in Czechoslovakia, such payment to be in orders of Priority Nos. 3(a) to 4(b) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$255.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest, but not to be taken into account for priority purposes.

Dated this 17th day of April, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9180

Re: Leblanc

Deputy Commissioner Choquette has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, he has relied upon the general arguments to which I referred in my report in CASE NO. 6078-*Rev. Rosario Renaud*.

He has also proceeded to argue that, following the presumption of maltreatment in Japanese-operated camps, an internee in such a camp is entitled to an award for personal injury, even if causal relationship has not been established between maltreatment and such injury, and even if no such injury is disclosed by the evidence. I cannot agree with the substance of such argument. The presumption of maltreatment in camps operated by the Japanese is raised by the War Claims Rules for the sole purpose of enabling the Commission to recommend maltreatment awards without specific proof of maltreatment. The learned Advisory Commissioner conceded in his report that a number of people who had not been actually maltreated would receive such awards. The experience of this Commission is to the effect that the number of those who were detained in Japanese-operated camps but were not actually maltreated was substantially larger than anticipated by the learned Advisory Commissioner.

The War Claims Rules prescribe that compensable personal injury must be established on the same basis, though perhaps not on such a strict screening of evidence, as prevails in cases in the civil courts. Obviously, in order to establish a valid personal injury claim, it would not be necessary for the testifying physician to have been constantly with the claimant before, during, and after internment, as suggested by the learned counsel for the claimant. It is, however, essential that the claimant must establish by reasonable inference the nature and extent of his personal injury and consequent pecuniary loss, and the degree to which such injury and loss were caused or aggravated by actual maltreatment.

In the present case, I agree with the conclusion of the learned Deputy Commissioner that there is no evidence to show that the claimant's alleged temporary incapacity was caused or aggravated by maltreatment.

I also agree with the learned Deputy Commissioner that expenses of repatriation to Canada are not compensable under the War Claims Rules and that no award can be made in respect of the sum paid to the Canadian Government.

Having reviewed the report of the Deputy Commissioner, I approve it without variation.

I accordingly recommend that the claimant be paid \$1065.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

I recommend that the claim for personal injury, as well as the claim for repatriation expenses and payment to the Government of Canada, be disallowed.

Dated this 29th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9183

Re: *Schiller*

Deputy Commissioner Choquette has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, his counsel has submitted arguments in support of the contention that the claim for personal injury should be granted and that an award should be made for loss of personal effects.

As to the claim for personal injury, this case is very similar to CASE NO. 9181-Rev. *Thivierge*, and the remarks which I have made in my report in that case and in CASE NO. 9180-*Leblanc* are applicable in the present case *mutatis mutandis*. I agree with the learned Deputy Commissioner that there is not sufficient evidence to establish the relationship of cause and effect between the claimant's maltreatment and his subsequent personal injury and resulting pecuniary loss, if any. In fact, in the present case there is no evidence that the claimant was subjected to any actual maltreatment during his detention.

As to the claim for loss of property, I also agree with the learned Deputy Commissioner that the absence of an inventory or description of the property, and the absence of proof of the circumstances surrounding the alleged loss, would normally be fatal to a claim for loss of property. In the present case, however, I am able to infer from the circumstances of the claimant's internment, and from evidence appearing in a number of similar cases presented to the Commission, that this claimant did sustain a loss, by reason of operations of war, of a certain quantity of personal effects. I consider that the \$200.00 claimed is a reasonably modest estimate of the value of the goods so lost.

Ordinarily, the War Claims Rules oblige the Commission to deduct, as satisfaction otherwise provided for, the compensation which the claimant might have secured under the Treaty of Peace with Japan. In most cases the experience of the Commission is that compensation under the Japanese Treaty, based as it is on replacement value in 1954 or thereabouts, is more than adequate to include the June 1941 market value prescribed by the War Claims Rules, together with interest in the intervening period. The Commission recognizes, however, that certain contingencies, expenses, and other difficulties might militate against a claimant's securing full compensation under the Japanese Treaty for loss of moveable property, especially in the nature of personal effects. In a small claim like the present, I am therefore of the opinion that no deduction should be made for compensation deemed to have been received under the Japanese Treaty. I would therefore reverse the disallowance of the property

claim by the learned Deputy Commissioner and I would recommend an award of \$200.00 on this branch of the claims.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I accordingly recommend that the claimant be paid:

- (a) \$1346.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2);
- (b) \$200.00 as an award for loss of property in Japan, such payment to be in order of Priority No. 3(a) and to bear simple interest from the 1st January 1946 at 3% per annum.

I recommend that the claim for personal injury, including travelling expenses and payment to the Government of Canada, be disallowed.

Dated this 16th day of June A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9191

Re: Carpentier

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has not presented any further evidence or information, but has relied on a number of general arguments which have been submitted by the same Counsel in a number of other cases. Counsel particularly contends that the claims on file should speak for themselves and should be admitted as proof of their contention on the assumption that the witnesses would have testified to the same effect. That contention, of course, cannot be admitted, especially in the case of a claim for personal injury, where it is necessary to establish the relationship of cause and effect between maltreatment and the alleged resulting ailment and pecuniary loss.

I agree with the opinion of the learned Deputy Commissioner that such relationship of cause and effect has not been established in this case, and that therefore the claim for personal injury, including expenses of voyage to Japan, must be disallowed.

The maltreatment claim was for \$1,368.00, and the learned Deputy Commissioner reduced this sum in his award to \$1,249.00. This reduction was apparently made by reason of the fact that information indicated that Mito, where the claimant was detained from 8th December 1941 to 16th March 1942, did not become a Japanese-operated camp until April of 1943. It is therefore evident that the claimant's period of detention at that point constituted house arrest rather than internment in a Japanese-operated camp. The learned Deputy Commissioner also deducted the period from 15th August 1945 to 6th September 1945. Available information indicates that in most Japanese-operated camps the control of the Japanese was removed on August 15th, and the automatic presumption of maltreatment must therefore be considered to have terminated on that date.

I accordingly approve the Deputy Commissioner's recommendation without variation.

I therefore recommend that the claimant be paid \$1,249.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

I recommend that the claim for personal injury be disallowed.

Dated this 24th day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9196

Re: Moreau

... Counsel particularly contends that the claims on file should speak for themselves and should be admitted as proof of their contention on the assumption that the witnesses would have testified to the same effect. That contention, of course, cannot be admitted, especially in the case of claims for personal injury, where it is necessary to establish the relationship of cause and effect between maltreatment and the alleged resulting ailment and pecuniary loss.

I agree with the opinion of the learned Deputy Commissioner Choquette that such relationship of cause and effect has not been established in these cases, and that therefore the claims for personal injury, including sums paid to the Government of Canada, must be disallowed.

As to the claims for loss of property, the Commission has invariably required, as a minimum of proof, a detailed inventory of the goods alleged to have been lost, with an estimate of their compensable market value; and also establishment of circumstances which would form the basis of a fair inference that the claimant was the owner of the goods in question and that they were lost or destroyed as the result of operations of war. The requirement of proof is even more important in the case of goods alleged to have been lost in Japan, owing to the availability of an alternative source of compensation under the Treaty of Peace with that country. I agree with the conclusion of the learned Deputy Commissioner that there is not sufficient proof in any of the above-noted cases to warrant recommendation of an award for property lost.

The amount of compensation involved in the claims for maltreatment in each of these cases was reduced by the learned Deputy Commissioner, apparently owing to his opinion that the evidence did not sufficiently establish that the places of detention at Sei Maria Gakuin and Honguchi were Japanese-operated camps. I agree with the Deputy Commissioner's opinion as to the period of detention at Honguchi. I am, however, inclined to the view that there is some available evidence to the effect that detention at Sei Maria Gakuin partook to some extent of the characteristics of a camp operated or effectively controlled by the Japanese, and that therefore the automatic *per diem* award should be granted in respect of that period. It must, on the other hand, be noted that the automatic presumption of maltreatment must be deemed to have ceased on 15th August 1945, when it appears that Japanese control was removed from most, if not all, civilian internment camps...

Dated this 24th day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9198

Re: Bellerose

Deputy Commissioner Choquette has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and I have also notified him, under the provisions of Rule of Procedure No. 20, that I considered it necessary to reduce the maltreatment award recommended by the learned Deputy Commissioner from \$1,371.00 to \$206.00.

In the course of the last mentioned notice, I referred particularly to the conditions under which the claimant was detained from 1st July, 1942 till the end of World War II, in a residence formerly belonging to an American Methodist Mission at Koshuyu or Chuseinando. I intimated my opinion that the method of detention at that point did not constitute internment "in a camp operated or effectively controlled by the Japanese", but rather amounted to a case of "enforced residence under enemy supervision". I drew the attention of the claimant to the official report of the Swiss Departmental Branch for protection of Foreign Interests, which indicated that sanitary installations were satisfactory and all the bedrooms were heated; that the internees prepared their own meals, and had at their disposal a well-equipped kitchen; that the food, though essentially Japanese, was apparently sufficient; that the health and morale of the internees was described as having been good; that a local hospital was available for any who became ill; that the internees cultivated a considerable vegetable garden on the lots adjoining the residence; that they had their own books and received daily newspapers in English and Japanese; that they were permitted to correspond freely with the outside world in their own language and to receive packages of victuals; that they were assisted financially by local authorities, and made no request for repatriation.

Unfortunately, the Swiss report was not available to the Commission at the time of the hearing before the learned Deputy Commissioner. When its contents came to my attention in the course of my review, I outlined the contents to the claimant in order to give him an opportunity of saying whether they corresponded with his recollection of conditions at Koshuyu or not. Instead, however, of making any helpful comments on the conditions which actually prevailed during that period of the claimant's detention, his learned counsel confines his reply to a vigorous criticism of the Commission for making use of an official report which was not available at the time of the original hearing.

Counsel also accuses the Commission of chauvinism (whatever that may be) and reiterates the argument which he has used in a very great number of cases in an attempt to undermine the whole jurisdiction and proceedings of the Commission. He again stresses particularly the absence of a code, of preliminary definitions, of special rules for charitable organizations, and of specially recommended amendments to the War Claims Rules. I have already referred to these arguments in considerable detail in my report in CASE NO. 6078-Rev. *Rosario Renaud*. As I have mentioned in another connection, if I were to make recommendations for the amendment of the Rules in respect to maltreatment of civilians in the hands of the Japanese, the effect of such regulations would be to restrict the presumption of maltreatment recommended by the learned Advisory Commissioner and to cast a more onerous burden of proof on claimants in such cases. It is, however, necessary to interpret the conditions of detention at Koshuyu in the light of the Rules as they at present exist. Though the Rules raise a presumption that all internees in Japanese-operated camps were maltreated, the onus still remains on the claimant to establish that each place of detention was a camp operated or effectively controlled by the Japanese. With the greatest of deference for the conclusion of the learned Deputy

Commissioner, and for the opinion of the learned counsel for the claimant, I can find in the testimony and materials before the Commission no evidence which would warrant the conclusion either that the Koshuyu period of the claimant's detention constituted internment in a Japanese-operated camp, or that he was subjected to actual maltreatment during that period.

As to the period of detention in the Franciscan monastery at Taiden from 21st December 1941 to the end of June 1942, I have also considerable doubt whether this detention should be considered internment in a Japanese-operated camp, or not. I am not entirely convinced that the circumstances of detention during this period warrant the learned Deputy Commissioner's findings that the place of detention was a camp administered or effectively controlled by the Japanese. There is, however, some very slight evidence to support such a conclusion, and I am therefore not disposed to disturb the findings made by the Deputy Commissioner as to this period.

As a result of the foregoing considerations I feel bound to recommend reduction of the maltreatment award from \$1,371.00 to \$206.00.

As to the claim for personal injury, the file discloses that no claim was originally made under this heading, but that injury to health was grouped with maltreatment in a single claim for a *per diem* award of \$1,371.00. Subsequently, an informal claim was added, composed of travel for health \$1,560.95, and medical attention \$1,614.71. Still later a claim was proposed of an additional \$14,000.00 to cover one year of inactivity and two years of semi-activity.

The ailments complained of by the claimant were appendicitis, and intestinal discomfort due to change of diet. No medical evidence or voucher for expenditure has been produced. I entirely agree with the conclusion of the learned Deputy Commissioner that the claimant's illness and consequent pecuniary loss, if any, have not been established to be the result either of operations of war or of maltreatment, and that this branch of the claim must therefore be disallowed. . .

Dated this 28th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9203

Re: Provost

. . . As to the claim for maltreatment, I have some considerable doubt as to whether the period of detention at the Baptist Mission in Shantung constituted internment in a Japanese-operated camp or whether it was rather enforced residence under enemy supervision. There is, however, some slight evidence to warrant the inference drawn by the learned Deputy Commissioner, and I am therefore not disposed to disturb his finding on this point. On the other hand, the learned Deputy Commissioner computes the presumed period of maltreatment from 8th December 1941 to 8th September 1943 at 722 days. The actual number of days intervening between the two dates mentioned is 640, and the maltreatment award must be amended accordingly.

I also entertain very considerable doubt as to whether the claimant's illness and alleged pecuniary loss have been established to be, in whole or in part, the result of maltreatment. Although a medical certificate dated 2nd March 1955 expresses the opinion of Dr. Langlois that the claimant's hospitalizations and treatments were necessitated by maltreatment during internment in China, the medical report of Lieut. Col. Bertrand dated 31st August 1945 refers to the claimant's ailment as being, in March 1944, an "old duodenal

ulcer". The latter mentioned report also clearly indicates that the claimant was given the very best available medical treatment during the period of his detention at Peking.

I am, however, not disposed to disturb the learned Deputy Commissioner's findings to the effect that there is some slight evidence to warrant an inference that the claimant's physical ailments may have been aggravated to some extent by conditions prevailing during the early period of his internment. I am of the opinion that the award recommended by the learned Deputy Commissioner is a fair and equitable estimate of the extent to which resulting pecuniary loss may have been increased by such aggravation . . .

Dated this 29th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9205

Re: Simko

. . . Apart, however, from the claimant's failure to have those documents legalized, it appears from one of the documents tendered that the damage to the claimant's house in Czechoslovakia is based on an estimate of the cost of repairs carried out by the Slovak Ministry of Technics. Obviously, if the repairs have already been carried out by the Slovak authorities, the claimant would not have any compensable claim against the War Claims Fund.

I have therefore no alternative but to approve the report of the Deputy Commissioner (*Marion*), and I accordingly recommend that this claim be disallowed.

Dated this 30th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9206

Re: Weatherhead

. . . Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, except as to date of adjustment of interest. Though there is some uncertainty in the purport of the unprobated will of the claimant's mother, the late Ellen Louisa Mitchelmore, I agree with the learned Deputy Commissioner that the small amount of the payable residue of the award does not justify the delay and expense of probate and judicial interpretation of the will . . .

Dated this 15th day of September, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9215

Re: Conner

This is a claim for maltreatment of the above named claimant while a prisoner of war in Europe.

Owing to the fact that hospitalization was provided for the claimant during substantially the whole period of his detention, I hold that the general pre-

sumption of the fact of serious maltreatment recognized by the Report of the Chief War Claims Commissioner has been rebutted.

In the circumstances I must find that maltreatment has not been established and I recommend that the claim be disallowed.

Dated this 28th day of April, A.D. 1955.

(Sgd) C. W. A. MARION

Deputy War Claims Commissioner

NOTE: *Disallowance approved by Chief Commissioner 2 June 1955.*

CASE No. 9226

Re: Stark

... As the claimant is presently being cared for by the Department of Veterans Affairs, it is recommended that payment of the award be made to the District Administrator, "B" District, Department of Veterans Affairs, Camp Hill Hospital, Halifax, N.S., to be held in trust for the benefit of the claimant. . .

Dated the 16th day of March A.D. 1955.

(Sgd.) JAMES FRANCIS, Q.C.,

Deputy War Claims Commissioner

CASE No. 9227

Re: Canadian National Railway Company and Canadian National (West Indies) Steamships Limited

Mr. A. B. Rosevear, Q.C. appeared for the claimants and Mr. Nicol for the Commission.

The claim of the Canadian National Railway Company is in the sum of \$4,787.81 made up according to the attached statement.

The claim of the Canadian National (West Indies) Steamships Limited is in the sum of \$1,768,295.89.

All of the above claims are allegedly due to war action.

Eligibility to claim has been established, both Companies being Canadian within the meaning of the Rules.

Dealing first with the claim of the Canadian National Railway Company—with regard to *items 1, 2, 3, 4 and 5*, it must be stated that such alleged losses were not due to acts of war, but rather to a state of war, which, under the Rules of the Commission, are not compensable. These items amount in all to \$46.50 and must be disallowed.

Item 11—loss of effects of J. H. A. Middlecoat—is abandoned, Middlecoat having at any rate received an award of \$1,500.00 which was assigned to the applicant. In any event this is an inadmissible claim under the Rules.

Item 12—loss of effects of S. P. Healy—\$500.00. If any, this would be a claim of Healy himself. As he is a United States citizen such a claim would fail on that account. This item must therefore be disallowed.

Item 13—This must also be disallowed as the loss was not due to an act of war, but in reality a debt which is not compensable under the Rules.

Items 6 and 7—deposits in the Hong Kong & Shanghai Banking Corporation and Yokohama Specie Bank. It is admitted that the money is still in the

banks, but is blocked and cannot be remitted. In several instances of a similar character it has been held that compensation under the Rules is not allowed. It is a debt owing by the bank, and the loss, if any, is due not to an act of war, and may yet be recovered. These items must therefore be disallowed.

Item 8—loss of petty cash in office in Singapore—\$50.00. Although the evidence is not as satisfactory as desirable, I am inclined to the belief that this amount would likely be on hand in the Company office. It is stated that the agent there was taken from his office by the Japanese and interned for several years. I am satisfied that this money was looted and the item should be allowed.

Item 9—loss of equipment in the Singapore office of the Company—\$439.00. A list of the looted goods is on file, and it seems to me that the quantity and alleged value should be considered reasonable for the office of such a Company. I would therefore allow this item.

Item 10—loss of office equipment in Hong Kong—\$1,872.00. This item includes many articles, according to the list, of furniture such as mahogany desks, chairs, filing cabinets, typewriter desks, typewriters, etc., valued at \$747.00, and \$1,185.00 for a picture "Pyramid Mountain". The estimate is signed by the Acting General Agent, J. H. Middlecoat. When Mr. Middlecoat's claim was heard, I formed a high opinion of his character and integrity and I feel satisfied that under all the circumstances his estimate of the value of office equipment should be accepted as reasonable and I would allow this item of \$747.00.

With regard to the claim for \$1185.00 for loss of the picture "Pyramid Mountain", the Rules require in the case of loss of works of art, jewellery, curios, etc., etc., substantial corroborative evidence of the extent of the loss or damage. In this instance, the only evidence is a notation that \$1185.00 was the cost of the picture. It seems to me that this is not in compliance with the Rules. It may be that it did in fact cost that much, but that in itself is hardly adequate proof of its true value. I think, however, it is only right that an opportunity should be given to the claimant to adduce further evidence and I reserve decision for a reasonable time to enable the applicant to meet the requirement of corroborative proof. Many claims have been rejected because of this Rule.

Leaving out of consideration, therefore, the item of \$1185.00 for said picture, there should be an award of \$1236.00 made up of items 8, 9 and 10 above-mentioned, the claim of \$1185.00 being reserved as above stated.

With regard to the claims for loss of rented Marconi equipment on the ships *S.S. "Lady Drake"* and *S.S. "Lady Hawkins"*, amounting to \$3,000.00 each, or \$6,000.00 in all, and which the applicant Railway paid, I am bound to say that as no insurance was effected in either case, and which might have been done, following the decision in other claims of a like nature, failure to insure leaves no alternative but to disallow these amounts (see pages 66, 67—sections 18, 19 of the Advisory Commission Report).

I therefore recommend an award in favour of the Canadian National Railway Company for \$1236.00, together with simple interest at the rate of 3% per annum from 1st January 1946, the above-mentioned item of \$1185.00 being reserved as above stated.

Claims in connection with the loss of the S.S. "Lady Hawkins" and S.S. "Lady Drake"

The position with regard to these companies may be said to be as follows:

The Government of Canada is the sole owner of all the shares in the Canadian National Railway Company. The Railway Company owns all the shares in the Canadian National (West Indies) Steamships Limited. In turn,

with the exception of the few qualifying shares, those of Lady Drake Limited and Lady Hawkins Limited, which are the registered owners of the ships in question, are wholly owned by Canadian National (West Indies) Steamships Limited.

The Canadian National (West Indies) Steamships Limited, the original owners of the said ships, transferred them to Lady Drake Limited and Lady Hawkins Limited in exchange for all the shares of each Company, and in addition, a mortgage was taken on each ship in favour of the Steamship Company; the *S.S. "Lady Drake"* in the amount of \$1,546,871.03 dated 29th June 1929 bearing interest at $5\frac{1}{4}\%$ per annum, and the *S.S. "Lady Hawkins"* in the sum of \$1,543,502.23 with interest at $5\frac{1}{4}\%$ per annum, the mortgage being dated 29th June 1929.

The *S.S. "Lady Drake"* was torpedoed and sunk by war action on the 15th April 1942, and the *S.S. "Lady Hawkins"* on the 19th January 1942.

The position of affairs with regard to these ships is somewhat confusing. The Canadian National (West Indies) Steamships Limited, in *form H*, simply claims for "loss of property" meaning the loss by sinking due to war action of the said two ships less certain insurance hereinafter mentioned. It is clear that the ships were technically at least owned by the Lady Drake Limited and Lady Hawkins Limited, but the total shares and both mortgages were owned by the Steamship Company, which therefore suffered the total loss.

It remains, therefore, to ascertain the extent of the loss due to the sinking of said ships.

In the case of the *S.S. "Lady Drake"*, evidence is that it cost in June 1929 \$1,613,231.41, and during the years 1935 to 1939 there were additions and betterments in the amount of \$81,486.70, making a total cost of \$1,694,718.11. According to *Exhibit 11*, depreciation calculated at 4% reduced the value of the ship as of May 4, 1942, to \$819,334.05, but opposed to this, the evidence is that, in fact, the value of the ship appreciated in value to an amount as of May 4, 1942, of \$1,950,015.04.

The method employed in ascertaining the appreciated value is what is called the "Fair Play" index which, it was testified, is acceptable to the Minister of Finance and also to the Canadian Mutual Shipowners Association.

The valuation of each ship as set out in the claim filed with the Custodian on 17th April 1946, and again in the application to this Commission on the 23rd March 1953 was \$1,500,000.00. At the hearing, application was made to increase the amount of the claim to \$1,950,015.04, based on the said "Fair Play" index.

It seems to me that this method of estimating depreciation and appreciation of the value of ships must be considered as more or less an artificial or arbitrary one subject to variations from time to time depending no doubt on the cost of and demand of ships at any particular time.

The *S.S. "Lady Drake"* was insured for war risk in the sum of £280,000, and the Company received as a result the sum of \$1,237,901.48. It was stated at the hearing that the said amount of insurance was the most obtainable at the time which, if true, is an adequate excuse for failure to insure for the alleged full value of the ship. Although the depreciated value as of 1942 was \$819,334.05, the fact that the Company was able to obtain insurance for \$1,237,901.48 is fairly good evidence that the ship was actually worth more than the depreciated value above mentioned.

The claim in the first place was for \$1,500,000.00. The appreciated value shown by the above statement (*Exhibit 11*) was \$1,950,015.04. I regard these figures as more or less artificial and the last mentioned valuation may be considered too high keeping in view the Rule that it is the reasonable market value that must be considered the basis of valuation. I am inclined to the

opinion that the claim first made, namely \$1,500,000.00 for each ship should be considered as fair and reasonable value at the time of the loss. Assuming this to be the case, from said sum of \$1,500,000.00 there must be deducted the amount of the insurance, namely \$1,237,901.48, leaving a balance of \$262,098.52. I would therefore consider the last mentioned amount as being fair and reasonable.

In the case of the S.S. "*Lady Hawkins*", the evidence is that it cost \$1,543,502.23, but according to the above mentioned "Fair Play" index, it appreciated in value as of January 1942, the market value being \$1,981,191.73, the original claim of \$1,500,000.00 being increased at the hearing.

Although negotiations were in progress to place insurance on this ship in the amount of £280,000, unfortunately, before the insurance was arranged or effected, the ship was sunk by enemy action. Up to that time it was the policy of the Company to carry their own insurance, a reserve having been set up for that purpose.

In claims for losses which could have been insured against, the Rule is very clearly set forth on pages 66 and 67 of the Ilsley Commission report, the gist of which being where insurance might have been obtained and there was neglect to obtain it, the claim should be reduced by the amount of the obtainable insurance plus the estimated amount of the premium which the insurance would have cost. In this instance, it was not quite a case of neglect, but a considered policy not to insure but to carry it themselves. Quoting from page 67 of the Ilsley report:

"The not unreasonable reaction to this policy would be to let them bear the loss."

I may add that in other cases of a similar nature this Rule has been adopted.

There is no doubt they might have insured the S.S. "*Lady Hawkins*" for £280,000 or \$1,237,901.46. This amount, together with an estimated premium of \$25,000.00 (the premium being at the rate of 2½%) must be deducted from the award.

As these two ships were practically identical, following what I have said in connection with the S.S. "*Lady Drake*", I would place the value of the S.S. "*Lady Hawkins*" at \$1,500,000.00, deducting the sum of \$1,237,901.48 for assumed insurance, and \$25,000.00 for estimated premium, leaving a balance of \$237,098.52

I therefore recommend the following awards in favour of the Canadian National (West Indies) Steamships Limited:

(1) In respect of the S.S. "*Lady Drake*" \$262,098.52

(2) In respect of the S.S. "*Lady Hawkins*" \$237,098.52

a total of \$499,197.04, together with simple interest thereon at the rate of 3% per annum in respect of the S.S. "*Lady Drake*" from 15th April 1942, and the S.S. "*Lady Hawkins*" from 19th January 1942.

November 26, 1956.

In my recommendation of the 26th November, 1956, I reserved the question of the value which should be attributed to the picture "Pyramid Mountain" lost in Hong Kong and suggested further evidence should be adduced especially as to the cost of the painting.

A statutory declaration by Harry Leslie Slater, Assistant Controller General of Canadian National Railways, dated 28 January, 1957, has come to hand to which are attached copies of a letter signed C. F. Goldthwaite dated 10th February, 1931, and copy of a letter signed by J. D. Neafsey to H. E. Vickers, both officials of the Railway.

If these letters are genuine, which I believe they are, then I feel satisfied that the picture did in fact cost \$1,000.

However, the true value of a picture is not necessarily its cost. In this instance this was a painting more or less for advertizing purposes exhibiting some of the country through which the Canadian National Railway passes. It does not seem to be one for the ordinary home.

The Rules provide that it is not the cost or replacement value, but the reasonable market value which must be considered as the basis of valuation. I have no doubt but that it was a very fine painting and useful for the Railway Company. But the reasonable market value is something else.

Considering everything I am of opinion that an award of \$500 should be regarded as fair and reasonable and would therefore recommend an addition of this amount to the award already made. There should be simple interest at the rate of 3% per annum from the 1st of January, 1946.

Dated this 22nd day of March, A.D. 1957.

(Sgd) J. D. HYNDMAN

Deputy War Claims Commissioner

Deputy Commissioner Hyndman has submitted to me his findings and recommendations, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's reports, and have omitted presentation of further materials on review.

Having reviewed the reports of the Deputy Commissioner, I am prepared to approve them without variation, except for a relatively unimportant detail concerning the portion of the Railway Company's claim which arose in Singapore, and a slight amendment as to interest.

I intimated to claimant's Counsel, in accordance with the provisions of Rule of Procedure No. 20, that it would be necessary for the Commission to deduct the amount, if any, which the claimant received, or might have received, from the Malayan War Damage Commission. Counsel has since furnished me with information to the effect that the War Damage Commission at Kuala Lumpur rejected the claim of \$489.00 which the Railway Company had filed with that Commission for loss of equipment in the office of the Company at Singapore. No reasons were given for the disallowance of the claim, but instructions were given as to the appropriate method of appealing if the claimant were dissatisfied with the decision. The claimant now admits that it neither appealed against the decision nor made any inquiries to ascertain whether, or not, there was an adequate reason for disallowance. These circumstances indicate to me that the claimant was negligent in the presentation of its claim before the Malayan Commission. From my experience with a number of similar cases, I am of the opinion that, by diligent prosecution of its claim before the Malayan Commission, the claimant might have secured at least a partial award. It is difficult to fix with accuracy the amount which would have been available from that source, but I would estimate it at approximately 50% of the total claim (exclusive of currency, whose loss was apparently not compensable under the Malayan Commission Rules), or a net of approximately \$220.00. According to the War Claims Rules, the claimant would therefore be deemed to have received that amount from the Malayan Commission, and it would therefore have to be deducted from the present award as compensation otherwise provided for.

I accordingly recommend that there be paid to the claimants the following amounts:

(a) To Canadian National Railway Company, \$1,736.00 as an award for loss of property at Hong Kong and Singapore, such payment to bear simple

interest from 1st January 1946 at 3% per annum; subject to deduction of \$220.00 deemed to have been received from the Malayan War Damage Commission, with interest adjustment from an estimated date of 19th December 1953;

(b) To Canadian National (West Indies) Steamships, Limited, \$262,098.52 as an award for loss of the S.S. "*Lady Drake*", such payment to bear simple interest from 4th May, 1942 at 3% per annum; (that appearing to have been the actual date of sinking);

(c) To Canadian National (West Indies) Steamships, Limited, \$237,098.52 as an award for loss of the S.S. "*Lady Hawkins*", such payment to bear simple interest from 19th January 1942 at 3% per annum.

As the Canadian National Railway Company owns all the shares in the Canadian National (West Indies) Steamships, Limited, the two claims are entitled to only one priority number rating. The recommended payments should therefore be consolidated in orders of Priority Nos. 3 (a) to 7 inclusive. My recommendation would be that the Canadian National Railway Company's award be paid in full, and that the Steamship Company be paid sums sufficient to exhaust the balance of the orders of priority which are currently being paid.

For the reasons mentioned by the learned Deputy Commissioner, I recommend that the portions of the claim referred to by him as Items 1 to 7 inclusive, and Items 11 to 13 inclusive, be disallowed.

Dated this 16th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9232

Re: *Richard*

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant contests the accuracy of the memorandum furnished by the Greek Department of External Affairs, to the effect that he was discharged from the *Adelfoi Chandris* on 5th May 1940, following his desertion by small boat at Dakar. After very carefully examining the evidence, I incline to the view that the date of the claimant's discharge by the owners of the Greek ship is a typographical error in the transcript of the memorandum. The *Adelfoi Chandris*, according to the evidence, did not arrive at Dakar until about 22nd June 1940, and the claimant testifies that he was detained on board the ship until he escaped with a number of his crew mates by stealing a life boat about March 1941.

As it is established that the claimant was enlisted as fireman on the *Dago II* on 3rd March 1941, and as he testifies that he was hospitalized on his arrival at Bathurst, B.W.A., I would infer that the date of his escape was sometime in February 1941. On that view of the situation, he would be detained at Dakar for approximately eight months by the Vichy French authorities. Though it is true that Canada was not at war with France, maltreatment awards have been made to a small number of claimants who were interned by the Vichy French military authorities, on the ground that the latter were collaborators of the occupying Germans.

It is true that the claimant was merely detained on his own ship, and was not removed to an internment camp, but apparently the conditions of detention were very oppressive. He does not complain of physical maltreatment, but merely of lack of food and lack of medicine during an epidemic of malaria.

I would give the claimant the benefit of the doubt in this case, and recommend a nominal award of \$50.00.

I therefore reverse the recommendation of the Deputy Commissioner and recommend that the claimant be paid \$50.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 28th day of March, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9247

Re: Isabelle du Rosaire

By a report dated November 5, 1956, I approved the report of Deputy Commissioner Marion, recommending the disallowance of this claim for maltreatment and consequent injury to health, in common with several similar claims.

In the course of my review at that time, the claimants had limited their submissions to the contention that they should be granted automatic awards for deprivation of liberty. As I pointed out in my report, the War Claims Rules preclude the recommending of awards for internment as such because international law permits a belligerent to intern enemy aliens or to restrict their liberty of movement.

I have since had occasion to review very carefully a considerable number of claims by other groups of Canadians who were interned by the Germans in the same camp as the present claimant, namely Camp Vauban at Besancon. For the reasons mentioned in CASE No. 9650—*Sister St. Louis de France*, I have come to the conclusion that the internees in that particular camp suffered some degree of compensable maltreatment, and are, therefore, entitled to a modest award on a lump-sum basis. By analogy with the other cases to which I refer, I would fix the amount of such lump-sum award in the present case at \$100.00.

I am, however, still of the opinion that the claim for personal injury must be disallowed. The illness of which the claimant complains was a liver ailment, which is said to have necessitated one year's rest and five years of diminished activity. Apart from the necessity of proof of pecuniary loss, there is not in the present case sufficient evidence to establish the claimant's illness as being directly caused or substantially aggravated by the privations which she suffered during her relatively short internment at Vauban. For that reason, I feel obliged to confirm the previous recommendation for disallowance of the personal injury branch of the claim.

I accordingly amend the recommendation made in my report of November 5, 1956, so far as the maltreatment claim is concerned by recommending that the claimant be paid \$100.00 as an award for maltreatment of herself whilst a civilian internee in Europe, such payment to be in order of priority No. (1-2).

Dated this 30th day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9251

Re: Mavec

....I therefore recommend that the claimant be paid \$1464.65 as an award for damage to property in Yugoslavia, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

The claimant has subrogated the Government of Canada to his right to receive compensation from any alternative source. Following the suggestion of the learned Deputy Commissioner, I reserve any question as to the likelihood of receipt of such other compensation for consideration by the Treasury Board.

Dated this 5th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9254

Re: Piller

This claim was heard orally by me at Ottawa on Wednesday, November 16, 1955, the claimant being present accompanied by her counsel, Mr. Redmond Quain, Jr. The claim is for an award of compensation in the sum of 15,000 deutschmarks for the loss of certain household furnishings, articles of clothing and other personal effects, due to war operations in Germany.

The claimant and her husband were born and married in Germany, and their daughter Elizabeth was born in Germany in June, 1924. The claimant's husband, Felix Piller, came to Canada toward the end of 1929 and settled in Renfrew, Ontario. The claimant and their daughter joined him in Renfrew in June, 1930. The son Fred was born in Renfrew in 1931. The husband and daughter were naturalized British subjects in Canada on June 2, 1936. The claimant was naturalized on May 5, 1939.

In May, 1939, the family left Canada and returned to Germany. According to the claimant they had been urged by the husband's father to return and take over the father's gardening business near Witten. They lived with the father, who was a member of the Nazi party, until February, 1940, when they had to leave the father's home. The claimant states that the reason for this move was that she and her husband could not obtain the father's property as they were not German citizens and did not want to become German citizens. They then moved into an apartment in the town of Witten where the claimant's husband, a bricklayer by trade, was employed by a local building contractor. They remained in Witten where the husband continued to be employed until October, 1947, when they left Germany to return to Canada. On February 28, 1950, the husband died here in Ottawa.

The property for which compensation is claimed was lost on December 12, 1944, when the apartment building in which it was contained received a direct hit. The facts of the loss are well established by independent evidence.

I feel some concern, however, regarding the conduct of the claimant and her husband in Germany during the war years. As Canadians in Germany, they were subject to detention and internment, as were all other Canadians in Germany at that time. Many Canadians were detained and interned, but they were not. Their son Fred, who was nine years old in 1940, was in Nazi schools first in Bavaria and subsequently near Strasbourg from some time in 1940 until September, 1944, and was clothed in Hitler Youth uniforms. Two of these uniforms are included in the lost effects for which compensation is now claimed. During the air raid in which their apartment was bombed the claimant and her two children had taken shelter in the basement of their apartment. She

testified that her husband was at the time in a "French prison in a safe place in an air raid shelter." Questioned further on this point she testified that certain French prisoners of war, who were bricklayers by trade, had been assigned by the Nazi authorities to work for her husband's employer, and that her husband, who understood French, worked with these prisoners. The prisoners were housed in a camp at the rear of the plant where her husband was employed. Her husband would go to this camp each morning, pick up his group of prisoners, take them to wherever they were going to work, remain with them during the working day, and deliver them back to their camp at the end of the day. When there was an air raid he would conduct the prisoners to an air raid shelter and remain there with them until the raid was over. This explains his presence in the French prison during the raid in which his own home was bombed. I take the following question and answer from the transcript of the evidence given by the claimant:

Q: Your husband was in charge of this group of prisoners?

A: Yes. They were bricklayers and my husband was a bricklayer and he could speak French.

She also testified that she and her husband had to go every morning to the police station before work and salute Hitler's picture. The whole tenor of her evidence is that she and her husband were coerced into doing many things that they would not otherwise have done, and that if they had not done these things worse might have happened to them.

The claimant had acquired Canadian status only a few days before leaving Canada to return to Germany; her husband had acquired Canadian status less than three years before returning to Germany. In May, 1939, when the claimant and her husband disposed of practically all their possessions in Canada to return to Germany war was not very far off and indications of war with Germany were not lacking. Before the claimant and her husband reached his father's home in Germany in July, 1939, after having spent some time in France and in Holland, war was getting still closer, and preparations for war in Germany were then well advanced. I have no doubt that all of this would be evident to the claimant and her husband, former citizens of Germany, and that when they elected to remain in Germany they realized the risk they were taking.

There is no doubt that the conduct of the husband of the claimant during the war years, with which conduct the claimant is unavoidably associated, was not the conduct of a loyal Canadian. There are worse things than being interned, and cooperation with the enemy, even though such cooperation may have been obtained through fear of internment, is one of them. There can be no doubt, from the evidence given by the claimant herself, that her husband actively aided the enemy war effort, and that the claimant is thereby disqualified in so far as compensation from the War Claims Fund is concerned. The general rule is that where there was any voluntary cooperation with or assistance to an enemy, in any part of its war effort, on the part of a claimant, whatever his nationality, that claimant should be denied all participation in and should receive nothing out of the War Claims Fund, and in the case of the death of such a person no compensation in respect of his losses should be paid to his heirs, executors or administrators. In this case there is no doubt that the husband of the claimant associated himself with the German war effort. Had he not had the confidence of the German authorities he would not have been in charge of a group of French prisoners of war during their working hours. As a Canadian he could have refused to cooperate in this way with the Germans, in which case he and his family would in all probability have been interned with other loyal British subjects in Germany. His wife, the present claimant, was

well aware of what he was doing and acquiesced in it. The attitude of the claimant's husband to the French prisoners of war who had to work under him may well have been sympathetic. Still, he supervised the work that they were forced to do and for which they were not paid, and this work was part and parcel of the German war effort. It would be an odd state of affairs, and I am sure the French prisoners of war would agree, if his aid to the German war effort were to be recognized by a payment of compensation to his widow from the Canadian War Claims Fund.

For these reasons, I would recommend that the claim of this claimant be disallowed.

November 21, 1955.

(Sgd) JAMES FRANCIS, Q.C.

Deputy War Claims Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, which recommended disallowance of the claim on the ground of collaboration by the late Mr. Piller with the German enemy in their war effort.

On review, I have had the benefit of additional testimony of the present claimant, and of submissions by her counsel, as well as of an extensive investigation conducted with a view to determining more conclusively whether, or not, the deceased's wartime activities in Germany constituted collaboration in the enemy's war effort in the sense prohibited by the War Claims Rules.

I fully agree with the opinion of the learned Deputy Commissioner as to the realized risk which the Piller family took when they elected to go to Germany and take up residence there at a time when preparations for war were so well advanced. As to collaboration, however, the only evidence which is available against Piller as the result of a most thorough enquiry, is that he was employed as a bricklayer by a construction firm named Franson at Witten, and that for a time he was supervisor of a number of French prisoners-of-war, who were also bricklayers. His wife testifies that he was mainly employed in the building of houses, and that she knew of no work that he ever did on military establishments or munition factories. The absence of any evidence respecting work on projects of a military nature is also evident in the reports of an independent official investigation.

The expression "war effort" in its broadest sense would probably include all normal civilian activities in wartime, such as the feeding and housing of the citizens of the country. Without such civilian activities a nation's war effort could not be maintained. But in the context of collaboration I think the expression "war effort" must be given more restricted meaning, such as the carrying out of actual war operations or direct employment in the preparation or distribution of military equipment, whether tangible or intangible.

The conventions respecting treatment of prisoners-of-war permit them to be compelled to do work having "no direct connection with the operations of the war". Non-commissioned officers may be compelled to undertake supervision of such work, and commissioned officers may volunteer for supervisory work.

It is never suggested that the action of prisoners-of-war in doing or supervising such permissible work can be classified as "collaboration". By analogy, I am of the opinion that the conduct of Piller, though not fully Canadian in its outlook, cannot be regarded as "collaboration or cooperation with or assistance to the enemy, in any part of its war effort".

Mr. Piller died on 28th February 1950. He had become a naturalized Canadian on 2nd June 1936, and was a Canadian citizen up to the time of his death. He was therefore a Canadian at the time of the act occasioning his loss, as required by the War Claims Rules. He died intestate.

The present claimant was granted Letters of Administration of her late husband's estate by the Surrogate Court of the County of Carleton (Ontario) on 19th July 1955. The inventory on file in the Surrogate Court discloses that the present claim constituted the only asset of the Estate. It therefore appears that formal administration was sought for the sole purpose of prosecuting the claim.

The Ontario *Devolution of Estates Act*, R.S.O. Cap. 103, s. 11(1), provides that the net value of an estate of \$5,000.00 or less belongs to the widow exclusively. The present claimant will therefore appear to be the sole beneficiary of her late husband's Estate.

Mrs. Piller became a British subject naturalized in Canada on 5th May 1939. She has been a Canadian citizen under Section 9(1)(a) of the *Citizenship Act* since 1st January 1947.

The eligibility of the Estate to claim, and of the widow to receive the benefit of an award, has therefore been duly established.

The learned Deputy Commissioner finds that the facts of the loss of property in the apartment building in which it was contained on 12th December 1944 are well established by independent evidence. For obvious reasons he found it unnecessary to make a finding as to the compensable value of the goods lost.

In a claim presented to the municipal authorities at Witten on 12th February 1945 Mr. Piller estimated the loss of this household goods to be RM. 8,500 to 9,000. On 5th July 1946 he revised his estimate to RM. 14,654 on the basis of a very detailed inventory then furnished for the first time.

Apart from the fact that a considerable number of the items appear to have been overvalued, the basis of valuation was clearly cost price "without any deductions for wear and tear". It should be remembered that compensable value must, under the War Claims Rules, be determined on the basis of reasonable market value at 30th June 1939 with deduction for depreciation (if any) to the date of actual loss. Cost price, or value to the owner, cannot be accepted as the ultimate criterion.

Many of the articles listed were of a very personal nature and such as to have little or no market value. Practically all consumer goods, however new, tend to depreciate in value once they have been used. I am of the opinion that the compensable loss should be fixed at Mrs. Piller's original estimate of R.M. 8,500 with a 20% deduction for depreciation. This would give a result of RM. 6,800, or the equivalent of Canadian \$2,720.00.

On the claim filed with the Federal Republic of West Germany it was reported that an award on DM. 800 would be granted. It is not clear whether that amount was to constitute a final or an interim award. In either case its payment was apparently suspended for cancellation "by the granting of a compensation through the Canadian Government".

The War Claims Rules, on the other hand, would clearly consider Germany as the primary source of compensation, and the War Claims Fund as a residual source. The amount which the Estate receives on the West German claim must therefore be deducted as "compensation otherwise provided for".

Since, however, undue delay would result from postponement of my recommendation until I could assess with reasonable certainty the possibility of recovery of compensation from Germany, I proceed to make my recommendation on the basis of the information now available, leaving it for the Treasury

Board, pursuant to S.4(4) of the War Claims Regulations to determine the portion of the payment and the time at which such portion may be paid out of the War Claims Fund.

Subject to the foregoing reservation, I reverse the recommendation of the Deputy Commissioner, and I recommend that Mrs. Elizabeth Piller as administratrix and sole beneficiary of the Estate of Felix Piller, deceased, be paid \$2,720.00 as an award for loss of property in West Germany, such payment to be in orders of priority Nos. 3(a) and 3(b) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 17th day of November A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9261

Re: Black

This is the claim of KX.115933, Lieutenant Allan William Black, R.N.V.R., for an award of compensation for maltreatment while a prisoner of war in Greece.

Lieutenant Black was born at Brandon, Manitoba, on January 18, 1916, and has retained his Canadian status at all times. During World War II he served with the Royal Navy, having been granted a temporary commission with the Royal Naval Volunteer Reserve on February 5, 1942, and having been retired therefrom on July 7, 1947.

On his Statement of Claim he declares that he was captured and taken prisoner from the vicinity of naval headquarters at Piraeus on December 14, 1944, and taken to headquarters of ELAS (communist group) for interrogation. On the following day he was transferred to a civilian prison on the outskirts of Athens. Two days later he, with four other British service prisoners, started on a forced march northward through mountainous country arriving eventually at the city of Domokos, (Dhomokos). Six days later the forced march was resumed, on this occasion with three other British soldiers. After many hardships they reached Volos but continued the march to Larissa, (Larisa). Here they met several hundred other British prisoners, and here the claimant had his first hot meal in more than a month. After several days at Larissa they were suddenly forced to march again, this time in a southwesterly direction to Trekala, (Trikkala). When still north of Trekala they came in contact with the main body of prisoners on the march, 1058 in all. At about this time he was suffering severe pain from an abscess in the ear and was taken to a makeshift hospital where he remained until shortly after his ear trouble had improved, when he was liberated by the American Red Cross on a prisoner of war exchange and returned by truck to Volos. Here they were met by naval vessels which returned them to the Piraeus where they arrived on February 5, 1945.

During the period between December 14 and February 5 the claimant claims to have experienced severe hardship and to have been physically maltreated by his captors and guards. He states that he was horribly beaten at ELAS headquarters when he refused to divulge information of value to the enemy. He was again beaten and left unconscious on the floor of an old church at Domokos when he asked for food and a change of lodging. Altogether, he appears to have had a very bad time.

The United Kingdom authorities confirm that the claimant was a prisoner in ELAS hands but it is not possible for them to obtain confirmation of his

experiences as a prisoner. The reason given for this almost complete lack of information is that the situation in Greece "was very fluid". To say that the situation in Greece in December, 1944, was "very fluid" is a masterpiece of understatement. The country was then in the throes of a civil war, brought about by the efforts and manoeuvring of rival political elements in a struggle for power. ELAS (National Popular Liberation Army) was the military arm of EAM (National Liberation Front) which itself was controlled by KKE (Communist Party of Greece).

Going back to the beginning we find that following a three-hour ultimatum and a declaration of war the Italian army invaded Greece on October 28, 1940. The Greeks, supported by a small British force, resisted valiantly until April, 1941, when the Germans attacked from Yugoslavia and Bulgaria and overran the country. The Greek Government then established itself in London. EAM/ELAS was created in September, 1941, as a resistance movement. Other similar movements were soon created, among them EDES (Greek Republican Liberation League), EKKA (National and Social Liberation) and PAO (Panhellenic Liberation Organization) being the stronger. By October, 1943, EKKA and PAO had been eliminated by ELAS and the contest for power was left to the communist ELAS and the republican EDES. These two groups fought with each other from October, 1943, to February, 1944, when an armistice was arranged between them, and the resistance work was resumed. The liberation of Greece was then advancing, and as it progressed the Government decided that all guerilla forces should be controlled and disarmed. EAM refused to disarm ELAS as long as other (by now Government) forces were allowed to operate. By November, 1944, it was clear that a trial of strength between EAM and the Government was impending. The issue came to a head on Sunday, December 3, when a demonstration organized by KKE in Athens was fired on by police and several demonstrators were killed. From then until January 15, when hostilities ceased, there was intense civil war, with EDES on the Government side and ELAS anti-Government. British troops in Greece were ordered to resist the ELAS attack.

I have found it necessary to outline the situation in order to deal with this claim which, as far as I am aware, is the only one made by a former prisoner of ELAS. I think I should say here that we were not at war with the Greeks, they were our Allies, and that British intervention in the struggle was solely for the purpose of restoring order. As Field-Marshal Alexander said in his report on the disturbances, it became impossible for us "to allow the destinies of a country for which we had been made responsible by inter-Allied agreement to be settled by armed revolution". In the House of Commons on December 5 Mr. Churchill said:

"Whether the Greek people form themselves into a monarchy or a republic is for their decision; whether they have a Government of the Left or Right is a matter for them. But until they are in a position to decide, we shall not hesitate to use the considerable British Army now in Greece, and being reinforced, to see that law and order are maintained."

It is abundantly clear, I think, that British intervention in the civil war in Greece was simply to maintain law and order in that country. In other words, it was a police operation of a definitely restricted character. It was unfortunate that members of the British forces fell into the hands of the ELAS organization. They no doubt experienced great hardship and may also, as the claimant claims, have suffered maltreatment. But as neither the United Kingdom nor Canada was at war with Greece the claimant was not a prisoner of war within the meaning of the War Claims Rules and on this ground alone his claim for compensation for maltreatment must fail.

There is still another ground that prevents the claimant from successfully establishing his claim. The War Claims Funds, from which maltreatment awards are paid, was constituted by the pooling of German and Japanese assets in Canada, to provide in some measure against war losses suffered by Canadians for which those countries have been held responsible. Neither the Germans nor the Japanese had any direct responsibility for the civil war in Greece in the winter of 1944-45, and it can hardly be expected that German assets should be used to compensate for maltreatment inflicted by a resistance group which fought and harassed the Germans in Greece throughout the whole of their occupation of that country.

For the reasons stated the claim of this claimant cannot succeed and must therefore be disallowed.

May 12, 1955.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: *Disallowance approved by Chief Commissioner September 17, 1955.*

CASE No. 9274

Re: Baier

Pursuant to my Report of 9th November 1955, this claimant received payment from the Treasury Board, in respect of his claim for war losses in West Germany, of three capital amounts totalling \$9,780.20 and of interest totalling \$3,481.75.

At the time of the hearing before Deputy Commissioner Hyndman, who reported his findings to me on 6th October 1955, there appeared to be considerable doubt as to the probability of the claimant's receiving any compensation from Germany, but my recommendation of an award of \$11,560.40 at that time was made subject to deduction of such "compensation otherwise provided for" as the claimant might later receive or be deemed to have received.

The payments approved by the Treasury Board were accordingly made to the claimant on the condition of his assigning to Her Majesty his entitlement to receive full or partial compensation from Germany.

The original award by this Commission was based on the claimant's loss of a one-third interest in a destroyed building in Cologne, computed at \$9,000.00, and of a similar interest in the contents computed at \$2,560.40.

More recently, additional information has become available, which would vary the original award in three respects:-

(1) According to German law, the contents of the building were the property of the claimant's mother at the time of their destruction. The claimant did not acquire any title to them until his mother's death in 1957 and therefore would not have any entitlement in this respect under the War Claims Rules.

(2) Under German law, the ownership of the building at the time of its destruction was vested in the mother and the two children in the proportions of one-quarter, three-eighths, and three-eighths. On the basis of the valuation of \$27,000.00 assessed by the Deputy Commissioner, this would increase the claimant's capital loss on this item from \$9,000.00 to \$10,125.00.

(3) As the result of competent presentation of a claim against Germany, an award has become available relative to the destruction of the building alone in an amount approximately equivalent to Canadian \$2,829.51.

The foregoing factors lead to an amendment of the claimant's award to the following effect:

Total capital award (building)	\$10,125.00
Less capital payments to claimant	9,780.20
Balance of capital award	344.80

I therefore recommend that this balance of \$344.80 be released to the claimant and that the remainder (of approximately \$2,484.71) available under his assignment to the Crown of his entitlement against Germany be retained for the credit of the War Claims Fund.

There remains for consideration the potential claim of the Fund for compensation in respect of interest relative to the capital overpayment of \$2,484.71, both before and after the date of overpayment in July 1960.

In view of the utmost good faith and cooperation displayed throughout by this claimant and his solicitors, and in view of the considerable legal expenses incurred by the claimant in prosecuting his claim both here and in Germany, I am disposed to recommend that the Fund's potential claim respecting interest be waived.

Dated this 12th day of November, A.D. 1965.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9277

Re: Edmonds

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further arguments in support of the contention that the recommendation of the Deputy Commissioner should be reversed and an award recommended.

The claimant's present submission is to the effect that the Deputy Commissioner's recommendation is contrary to the evidence, particularly in view of the affidavit of one Dr. Hurley, which was filed between the time of the hearing and the making of the Deputy Commissioner's decision.

The learned Deputy Commissioner gave very careful consideration to this claim, on the basis of an oral hearing and supplementary affidavit evidence. From a careful review of the claim, I am unable to say that the Deputy Commissioner's decision is perverse or even unreasonable in the circumstances. It would therefore be very difficult, if not improper, for me to attempt to reverse the Deputy Commissioner's decision. The evidence submitted appears to lack the cogency of proof which is necessary for the establishment of a claim of this nature.

Having reviewed the Deputy Commissioner's report, I approve it without variation, and I accordingly recommend that the claim be disallowed.

Dated this 9th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9278

Re: *Fitzgerald*

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has also been notified, in pursuance of the provisions of Rule of Procedure no. 20, that, for the reasons applied in a group of similar cases, I felt bound to reverse the decision of the Deputy Commissioner and to recommend disallowance of the claim. I drew particularly to the attention of the claimant the case in which a member of the Canadian armed forces was returning from leave at his own expense, and therefore contended that he was in a different position from a member of the services who might be travelling on draft, or from one station to another.

The present claimant now submits information to the effect that he was not travelling on leave at his own expense when the "*Lady Hawkins*" was torpedoed, but that he was travelling on special leave with expenses provided, owing to the temporary disablement of the naval vessel to which he had been attached.

This distinction makes no difference whatever to the merits of the present claim. Reference was made to the case of the servicemen on leave merely to indicate that a man on leave cannot be considered to be in a better position as regards claims for loss of personal belongings than a man on actual service or on transfer from one station to another.

As indicated in CASE No. 5332—*John Fillmore O'Brien*, the relevant provision of the War Claims Rules is set out at page 58 of the Report of the Advisory Commissioner:

"One class of exceptions to the losses enumerated above as compensable should, however, be established. These losses as enumerated would include certain losses of personal belongings by members of the Canadian armed forces lost, stolen or looted. I am informed that the understanding has always been that members of the armed forces, if they took with them personal belongings on service, did so entirely at their own risk and in my opinion losses of such belongings should not be compensable out of the War Claims Fund."

The Advisory Commissioner's comments are perhaps too concisely expressed to give a complete picture of the situation. As a matter of fact, the several branches of the armed forces had somewhat elaborate regulations providing for compensation, within certain limits, to members of the respective services for loss of personal belongings. Members of the respective services were expected to familiarize themselves with those regulations, and with the limits of compensation thereby provided, as well as with the fact that they should insure their personal belongings against war risks which were beyond the limits of compensation provided by the regulations. They were also, upon discharge, given a specific opportunity of making a claim for loss of personal effects.

In the light of this situation, it is necessary to interpret the comments of the learned Advisory Commissioner by assigning to the last sentence the following meaning:

"I am informed that the understanding has always been that members of the armed forces, if they took with them personal belongings on service, did so entirely at their own risk except insofar as any loss might be compensable by the service regulations of their respective branches of the armed forces, and in my opinion losses of such belongings should not be compensable out of the War Claims Fund."

On a very careful consideration of all the circumstances, I am of the opinion that the Commission has no authority to recommend compensation for losses of personal belongings taken with them by members of the armed forces.

Having reviewed the Deputy Commissioner's report, I therefore reverse his recommendation and I recommend that this claim be disallowed.

Dated this 5th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9279

Re: Strickland

....I have reached the conclusion that in the present case there is evidence that the death of the deceased Mrs. Strickland caused a general dislocation of arrangements in the family to which she belonged. As a consequence there appears to have been a resulting pecuniary loss to her husband and her surviving children, each of whom appears to have been a Canadian, within the meaning of the War Claims Rules, at all relevant times. It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the amount of \$400.00 in the case of the husband (who remarried on the 16th July 1948) and \$200.00 in the case of each of the surviving children....

Dated this 10th day of March, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9288

Re: Gruber

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has personally submitted a written argument in support of the contention that the Deputy Commissioner's disallowance should be reversed and an award recommended.

The claimant relies partly on "consideration from a humanitarian angle". This aspect of the case is, of course, one which the War Claims Rules do not permit the Commission to entertain. The claim must be decided solely on the question of whether, or not, the loss which the claimant suffered is compensable under the provisions of the Rules.

The claimant, however, goes on to emphasize previous submissions to the effect that his loss was a compensable one owing to the fact that the confiscation on the enterprise in which he was a partner (namely Placek & Co.) was carried out in Czechoslovakia by the German authorities, who were not recognized by Canada as a lawful government, and that the confiscation was therefore invalid and void. The looting and destruction of the business in 1945, when

the war was drawing to a close, would therefore, in the claimant's submission, constitute an operation of war during the period when he was a Canadian national.

In his report in CASE No. 4493—*Placek*, which should be read in conjunction with his report on the present claim, the learned Deputy Commissioner found that the "Germans forcibly took possession of the partnership assets in March 1939 or January 1940, and disposed of the contents and merchandise in the ordinary course of business, replacing them with others from time to time, there having been at least six turnovers of the merchandise during the German occupation (with the result that) the original merchandise must have been disposed of and have disappeared long prior to 1944, when claimants became naturalized in Canada."

I agree with the opinion of the Deputy Commissioner that any loss which the claimant suffered through the confiscation and sale of the stock-in-trade in which he had an interest must be held to have occurred at the time of the confiscation or sale. It is therefore unnecessary to determine whether such loss would be related to the seizure of the actual goods, or whether it would be in the nature of a money claim, as in either case it would have arisen before the claimant became a Canadian, and would therefore not be compensable under the War Claims Rules.

I am, on the other hand, of the opinion that a fair inference may be drawn from the evidence that some portion of the stock-in-trade, and particularly of the operating equipment owned by the partnership, would remain on the premises until after the claimant became a Canadian, and would be the subject of illegal confiscation, looting or destruction during the latter months of the war, the period in respect of which the claimant is eligible to claim.

It is obviously extremely difficult to estimate with any degree of precision the identity or value of the goods which may have been lost or destroyed during the compensable period. Naturally, any of the original articles which still remained in stock in 1944 and 1945 would constitute the less saleable portion of the former stock, and must be taken to have depreciated very considerably from their earlier values. As to the items of equipment used in the operation of the business, they must be assumed to have depreciated very considerably from wear and tear during the difficult years of the war. The best I can do is to place myself in the position of a jury, and in that capacity I would estimate at \$4,000.00 the compensable value of the claimant's share of the partnership assets which were lost or destroyed by looting or other operations of war in the period between the claimant's naturalization on 24th May 1944 and the termination of hostilities on 8th May 1945.

I therefore reverse the recommendation of the Deputy Commissioner, and I accordingly recommend that the claimant be paid \$4,000.00 as an award for loss of property in Czechoslovakia, such payment to be in orders of Priority Nos. 3(a) and 3(b) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 9th day of April, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: *Expenses reserved and later allowed at \$120.00 on 14th May 1959.*

CASE No. 9292

Re: Byrne

Since making my report dated 8th June 1956 on the above noted claim for the death of the late William Aron Byrne I have had the opportunity of further reviewing this claim in conjunction with a number of somewhat similar claims.

I have reached the conclusion that in the present case there is evidence that the death of the deceased caused a general dislocation of arrangements in the family to which the deceased belonged. As a consequence there appears to have been a resulting pecuniary loss in addition to that for which specific compensation has been awarded pursuant to my previous Report.

It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the additional amount of \$2,700.00.

Dated this 8th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: Extract from Recommendation of June 1956:

"Mr. James Alexander Winter, Registrar of the Supreme Court of Newfoundland, has expressed his willingness to act as Trustee for the minor beneficiaries of the award. This consent has been given with the approval of the learned Chief Justice of the Supreme Court of Newfoundland. I therefore consider it proper, in pursuance of the suggestion of the learned Deputy Commissioner, that the shares of the minor children Ruby Byrne and William Aron Byrne be paid to Mr. Winter in trust for them."

CASE No. 9295 (11 IT)

Re: Massei

...In respect to the costs incurred by the claimant in Italy in establishing his claim, the Deputy Commissioner (Francis) points out that the amount recommended is the largest award for expenses which has yet been recommended by the Commission on any "Italian" claim, although the present case involves only one parcel of property, whereas other claims have involved two or more parcels. Some of the items charged by the claimant do not appear to be compensable, such as taxi and train fares, as inconvenience and personal expense are always inevitable in the establishment of a claim of this nature. Other items of expenditure do not appear to have been necessary for the purpose of the Commission, such as the translation from Italian to English of documents of title, surveyor's estimates, and other similar documents. The Commission prefers to receive these documents in the original language, and has facilities for having them translated without expense to claimants.

In all the circumstances of the case, I am of opinion that the amount recommended by the learned Deputy Commissioner as compensation (30,000 lire) for expenses is reasonably adequate, and fully in line with awards recommended in comparable cases...

Dated this 22nd day of December, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9303

Re: Franciscains

This is a claim for property loss in Japan in the sum of \$151,197.05, including \$110,594.25 for destruction of the building of the hospital of St. Francis of Nagasaki, and \$40,602.80 for furnishings destroyed in the hospital and in two other buildings. There are additional claims for loss of movable and damage to immovable property, all situated in Japan, bringing the grand total of the compensation claimed to the sum of \$173,554.23.

It became evident that the most important question to be decided in connection with this claim concerned the availability of "satisfaction otherwise provided for" in the form of potential compensation from the Government of Japan under the Treaty of Peace with that country. I accordingly appointed Deputy Commissioner Choquette as a Special Examiner for the taking of *viva voce* evidence with particular reference to the question whether the claimant presented a claim under the Treaty of Peace with Japan, and, if so, what disposition was made of such claim; and, if not, why the claimant did not present such a claim under the Treaty. The learned Deputy Commissioner held an oral hearing and returned to me the depositions then taken.

From the evidence taken before the learned Special Examiner, as well as from other materials on record and from the admissions of Counsel, it appeared that neither was any compensation received by the claimant under the Treaty of Peace with Japan, nor did the claimant present any claim or application directed towards the securing of such compensation.

I thereupon intimated to the claimant my opinion that it would be necessary to recommend disallowance of the claim on the ground that the claimant had been remiss in seeking available alternative compensation which would have been in excess of the amount which this Commission could award from the War Claims Fund. Compensation for property destroyed or damaged by operations of war is computed, under the Treaty of Peace with Japan, as the cost of replacement at the time of compensation in or about the year 1955. All materials before the Commission indicate that, in cases of destruction of, or damage to, immovable property, or movable property of the nature lost by the claimant, the Japanese Treaty awards would be more than sufficient to include compensation based on the 1941 reasonable market values prescribed by the War Claims Rules as well as interest from 1st January 1946.

The claimant proceeded to submit a series of arguments in opposition to the disallowance of its claim. Counsel, in the first place, raised a number of general objections to the jurisdiction and functioning of the Commission. I have dealt with those preliminary objections in some detail in CASE NO. 6078-*Rev. Rosario Renaud*, and my comments regarding them in that case apply also here.

More specifically, Counsel for the claimant contends that the principle of "satisfaction otherwise provided for" should not be applied in the present case for two principal reasons: (a) the claimant was unaware of the availability of alternative compensation from the Government of Japan under the Treaty of Peace; (b) notice to this Commission of the claimant's intention to apply for compensation for war damages occurring in Japan was compliance with the claimant's obligation to seek with reasonable diligence any compensation which might be available as an alternative to an award from the War Claims Fund. In other words, Counsel contends that the War Claims Commission was an agency of the Government of Canada and was, upon receipt of notice of the claimant's claim, under obligation not only to determine its validity under the War Claims Rules, but to see that it was duly prosecuted as a claim under the Treaty of Peace with Japan.

I am unable to agree with the contentions of learned Counsel, for the following reasons:

1. This Commission is a body established for the consideration of individual claims against the War Claims Fund. It is not a department or agency of the Government of Canada, and has no obligation, or function, to present claims of Canadians against the Japanese Government, or against any alternative source of compensation.

It is true that the War Claims Rules provide for the assessment by the Commission of compensation which may be available from alternative sources, but the obligation of such assessment is limited to the deduction of such alternative compensation, whether received or deemed to have been received by a claimant, and does not in any way extend to the presentation of claims to foreign countries on behalf of Canadian claimants.

2. Though the Treaty of Peace with Japan envisages the presentation of claims made by Canadians through the Government of Canada, I take that to mean that claims are to be presented through the Government of Canada at the instance of the individual claimants concerned, and that the Government did not undertake the obligation of originating the presentation of individual claims.

3. A claimant who has failed to present a claim for compensation which he knew, or ought to have known, was available, is deemed to have received such compensation as he would have received but for his neglect or default. As above mentioned, I regard the onus of inquiry as being upon a claimant with respect to compensation available from the Government of the country in which the loss occurred. If a claimant did not make reasonable inquiries, he must be held to have been negligent.

4. Although I regard express notice to a claimant of the availability of compensation from an alternative source as being unnecessary to fix upon such a claimant the obligation of inquiring into, and prosecuting a claim against such alternative source, there is ample evidence before the Commission in the present case to indicate that the claimant had both express and implied knowledge of the availability of compensation under the Treaty of Peace with Japan, and neglected to prosecute a claim in spite of such knowledge.

(a) A number of Missionary Orders of the Roman Catholic Church in the Province of Quebec, including the claimant corporation, organized what was known as the Comité National d'Entr'aide Missionnaire du Canada, for the purpose of pooling information regarding war losses and providing a secretariat for the purpose of assembling and distributing such information. The Director of this organization was Rev. Rosario Renaud, who informed the War Claims Branch of the Office of the Custodian, Department of the Secretary of State, of the formation of the group and of his appointment as Director General. He also attached to his communication a list of the corporations (including the claimant corporation), who were members of the Comité so formed. On 6th August 1953 the Director of the War Claims Branch forwarded to Rev. Renaud a notification of the availability of compensation, under the Allied Powers Property Compensation Law, for loss of property in Japan during the war in the Pacific. He included in his communication a copy of the Statute in question and offered to provide official instructions, and the relevant documents and forms on request. Father Renaud acknowledged this communication on 10th August 1953, and intimated his intention of calling upon the Director of the War Claims Branch about two weeks later to discuss matters relating to war claims. Apparently, however, nothing further was done by Father Renaud or by the claimant pursuant to the Director's communication.

(b) In CASE NO. 3061—*La Congregation de St. Dominique*, it was found, on the basis of a voluntary admission in writing by the mandated representative of the claimant in that case, that the claimant had voluntarily abstained from making any claims against the Government of Japan on specific instructions of the Papal Delegate to Japan. Other materials on record indicate that the instruction so given by the Papal Delegate was applicable to all Roman Catholic organizations which had been engaged in missionary work in Japan and had suffered war losses in that country. Such a directive would appear to have been inspired by the wish to maintain good public relations with the government and people of Japan in the interests of future missionary work in that country, and the same practice of abstention from claims seems to have been followed by Protestant denominations as well.

(c) There is on file with the Commission a statutory declaration made by an official of the Department of External Affairs of the Canadian Government, who was attached to the Canadian Embassy in Tokyo from 1953 to 1956, to the effect that on 21st May 1953 a letter was dispatched by registered mail and special delivery to those Canadians in Japan (including Rev. Prudent Monfette, who was then Provincial of the Franciscan Order in Japan, and Brother Ernest Casgrain, a member of the same Order; and including the Catholic Diocesan Corporation of Sendai) who, from information available at the Embassy might be considered to have grounds to file compensation claims against the Japanese Government under Article 15(a) of the Treaty of Peace with Japan. To that letter was attached a translation of Law 264, and copies of the relevant regulations and forms for use by claimants in the presentation of claims. The deponent goes on to state that on 29th September 1953 a similar letter (without the attachments) was dispatched by registered mail to the prospective Canadian claimants in Japan who had not acknowledged the letter of 21st May. The deponent further states that between June and October 1953 he met Father Prudent Monfette in Japan, at least once and possibly twice, and discussed with him the matter of compensation claims.

I drew this statutory declaration to the attention of Counsel for the present claimant, not with a view to accepting its contents as conclusive proof, but with a view to inviting discussion and further evidence, if necessary, relating to its subject matter. Counsel took strenuous objection to my use of the statutory declaration on the grounds that it had not been produced in open court and that the claimant had not had an opportunity of cross-examining the deponent. He intimated that he had instructions to the effect that Rev. Monfette and Brother Casgrain would be brought from Japan to give evidence in contradiction of the declaration.

I intimated that the appropriate ground work had not yet been laid for the incurring of such a large expense, but that if the Reverend members of the claimant Order would state their proposed evidence in the form of an affidavit or statutory declaration I should then be in a position to decide upon the desirability of a further oral hearing at which they might give their evidence, and at which the official of the Department of External Affairs would be available for cross-examination. There was then submitted to the Commission a document signed by Brother Casgrain, which was not declared before an official authorized to take declarations, but which denied any notice or knowledge, at the relevant time, of the availability of the Japanese award. This document was returned to Counsel for the claimant on 22nd November 1957 with the request that it, as well as the proposed declaration of Rev. Monfette, should be attested before a duly authorized official. On 27th December 1957 learned Counsel wrote to the Commission, informing us that neither Rev. Monfette nor Brother Casgrain was prepared to furnish a sworn statement confirming their previous denial of notice or knowledge of the availability of the Japanese award.

Apparently, in the interval, Rev. Monfette had personally visited the Secretary of the Canadian Embassy at Tokyo and as a result of his conversation there he was unable to furnish the proposed affidavit.

As I have mentioned above, I do not consider express notice to be an essential factor in fixing upon a claimant responsibility for neglect in prosecuting a claim against an alternative source of compensation. Nevertheless, from the point of view of courtesy, the available materials indicate fully that the claimant corporation, its members and representative Comité, had express, as well as implied, notice and information regarding the availability of Japanese awards.

I am also convinced that, if the claimant had duly presented a claim under the Japanese Treaty, it could have secured compensation substantially in excess of that which could be awarded under the War Claims Rules, including interest. Such available compensation must therefore be deemed to have been received from the Government of Japan, with resulting cancellation of any award which might otherwise have been recommended from the Canadian War Claims Fund.

I therefore recommend that this claim be disallowed.

Dated this 24th day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9309

Re: Arcand

The instant claim, for maltreatment and death, was held at Montreal on April 4, 1955. It was filed by the "Syndics Apostoliques des Frères Mineurs ou Franciscains du Canada", a Canadian Religious Corporation, of which the late Father Didace (Léon) Arcand, a Canadian by birth who died at Chefoo (China) on February 8, 1952, was a member. The claimant corporation claims that it stood in *loco parentis* to the deceased, and for the purposes herein, it must be considered as his beneficiary. The claim, in the amount of \$7,652.80, states the following facts:

(a) *Maltreatment*.—According to *Form E*, the deceased was detained during 1162 days at the following places:

Chefoo: Temple Hill, from May 11, 1942 to August 15, 1943

Peking: Franciscan House, from August 16, 1943 to August 16, 1945.

According to the War Claims Rules, p. 55, v. fr. p. 60, and previous decisions when the victim dies, the award for maltreatment serves for the benefit of his dependants only. In the present case, it was the other way around, the deceased person being a dependant of the beneficiary and not the beneficiary who was a dependant of the deceased. Therefore, this part of the claim cannot be entertained.

(b) *Personal Injury*.—According to Father Blais' testimony, it would appear that after the deceased's liberation, he came to Canada for a one-year rest, that he then returned to China to pursue his Ministry, and that he died in a Communist jail, at Chefoo on February 8, 1952. Here, the death occurred subsequent to World War II, which, indeed, is not awardable under the Rules as applicable to the present claim. The only question to decide is: Was the deceased's inactivity, for which an award of \$4,660.00 is claimed, due to maltreatment, or was it due solely to incarceration and a state of war, regardless of maltreatment. In the absence of any medical or other evidence substan-

tiating the nature of the pains endured by the claimant, and their causal relationship with the alleged maltreatment, this part of the claim cannot be entertained either. Furthermore, the \$1,830.80 item respecting a "trip to Canada for health purposes (return trip)" cannot be awarded according to the Rules.

The claim is disallowed.

Dated at Quebec City, this 11th day of November, 1957.

(Sgd) FERNAND CHOQUETTE
Deputy War Claims Commissioner

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has omitted presentation of further materials with the exception of general objections to the jurisdiction and proceedings of the Commission, to which I have referred in detail in my report on CASE NO. 6078—*Reverend Rosario Renaud*.

As to the claim for maltreatment, an award under this heading is regarded by the War Claims Rules as being in the nature of a *solatium* and as being of a highly personal nature with reference to the person maltreated. If the latter dies before receiving an award, his award survives for the benefit of his personal dependents, but not for the benefit of his estate or of any person or corporation outside the restricted list of dependents enumerated in the Report of the Right Honourable Advisory Commissioner. For these reasons, it is not possible to recommend the granting of a maltreatment award to the religious Order of which the late Father was a member, even though it may be successfully contended that the Order stood in *loco parentis* to the member concerned. I have therefore no alternative, under the provisions of the War Claims Rules, but to approve the recommendation of the Deputy Commissioner (See CASE NO. 6766 concerning the death of *Sister Marie Catherine Agnes*).

As to the claim for personal injury, I agree with the conclusion of the learned Deputy Commissioner that the evidence is not sufficient to establish causal relationship between maltreatment and the illness which intervened between the liberation and death of the late Father Arcand. The claim for expenses of voyage to Canada is not allowable under the provisions of the War Claims Rules.

Having reviewed the Deputy Commissioner's report, I approve it without variation.

I accordingly recommend that these claims be disallowed.

Dated this 29th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9315

Re: Heller

Deputy Commissioner Francis has submitted to me his recommendations dated 20th October 1955 and 14th May 1956 respecting the claims for loss of properties and rentals in Germany; also his report dated 31st January 1959 with respect to claims for loss of property in Warsaw, Poland.

The claimants have been furnished with a copy of each of the Deputy Commissioner's reports. I have also notified them, pursuant to the provisions of Rule of Procedure No. 20, that I considered it necessary to revise the Deputy Commissioner's recommendations downward in the following respects:

(a) That the claims for losses in Germany, with the possible exception of that respecting No. 55 Konstanzerstrasse, should be disallowed on the ground that the properties concerned were not owned by the claimants at the time of the war losses;

(b) That the award for loss of property in Poland should be reduced to a sum in the vicinity of \$100,000.;

(c) That the award to Paul Heller for loss in Poland might have to be reversed and his claim disallowed unless more specific evidence could be produced to establish that the loss took place at a time when he was a Canadian national.

(d) That any award for confiscation of rentals, being in respect of a "money claim" must be converted into Canadian currency at the rate of exchange prevailing on 30th December 1949, instead of at the 1939 conversion rate applied by the Deputy Commissioner.

Samuel Heller became a Canadian national on 15th September 1943, and Paul Heller on 20th July 1944.

On review of the Polish claim, the claimants have submitted a written argument, supplemented by additional evidence, in support of the contention that the destruction of the property clearly took place at a time when both claimants were Canadians, and that the total award recommended by the Deputy Commissioner was, if anything, too low.

Among the new evidence submitted is a certificate of the Division of Architecture and Building Inspection, Board of the National District Council for Warsaw—Old City, to the effect that the building concerned was burned down and destroyed during the Warsaw uprising. It is well known that the uprising began on 1st August 1944, and that the resulting fighting and destruction continued for approximately two months. This new evidence officially supports the finding of the Deputy Commissioner that the building was destroyed by war operations in August or September of 1944. At that time both claimants would be Canadian nationals, and they have continued to be such ever since.

As to the quantum of the loss involved, I am now inclined to agree with the claimants that the evidence indicates a pre-war value of the building probably in excess of the award recommended by the Deputy Commissioner. It is hardly to be supposed, however, that the building would be kept in its former good condition throughout the five trying years to which the City of Warsaw was subjected before the destruction of the property. Allowing for the resulting depreciation, my present opinion is that the Deputy Commissioner's award is as fair an estimate as can be reached of the value of the property at the time of the loss. I approve his recommendation accordingly.

As to the claims for losses in Germany, Mr. R. H. Tupper appeared before me at Ottawa and supplemented his written argument by a very competent oral presentation in support of the contention that awards should be maintained for the loss of the German properties. He contended that the purported confiscations of the properties in Germany were *ultra vires* of the officials who carried them out and were void for that and other reasons, including the illegality of confiscations made on the basis of race or alien nationality, as well as the applicable measures of post-war restoration.

After a very careful consideration of Mr. Tupper's submissions, I am firmly of the opinion that the German properties, with the possible exception of No. 55 Konstanzerstrasse, were confiscated by the established German authorities before the claimants acquired Canadian national status, and that the claimants were not, by German law, the owners of the confiscated properties at the time of the damage by operations of war. I therefore feel bound to follow the principles and formulae adopted as a result of a series of meetings of the Deputy Commissioners in February 1958 and applied in such cases as No. 1486—*Whitehead*, Nos. 9890 and 9891—*Lourie*, No. 9623—*Mahler*, and No. 9869—*Kahn*.

Those principles may be summarized as follows:

NOTE: *for these principles, see Case No. 1486—Re: Whitehead.*

According to the findings of the learned Deputy Commissioner the ownership of all the properties involved, with the exception of No. 55 Konstanzerstrasse, was confiscated by the German Government toward the end of 1940, but they were re-vested in the claimants under post-war measures of restoration. Following Item No. 3 of the foregoing formula of interpretation, I am bound by the conclusion that the confiscatory measures must be considered valid, and that therefore the claimants were not the owners of those properties at the time of the actual war damage. Following the principle of Item No. 4 in the formula of interpretation, I am also bound to hold that such lack of ownership at the relevant times is not cured by the application of post-war measures of restoration.

For these reasons, I feel bound to reverse the Deputy Commissioner's decisions to that extent, and to recommend disallowance of the awards recommended in respect to all the properties except the one on Konstanzerstrasse.

With respect to the Konstanzerstrasse property, the situation appears to have been somewhat different. Although the learned Deputy Commissioner finds that the property was seized by the Nazi authorities, who proceeded to collect the rentals for the remainder of World War II, he goes on to find that the claimants' ownership of this property was not divested, but that they continued to be regarded as the legal owners throughout the war period. This decision amounts to finding that the claimants were the owners of the Konstanzerstrasse property at the time of the damage which occurred to it as the result of actual operations of war.

Though the situation is not entirely clear, I am disposed to accept the learned Deputy Commissioner's opinion that this property was not confiscated in a sense to divest the claimants of their ownership.

The situation is somewhat complicated by the fact that a portion of the damage was suffered by this property at a time when the claimant Paul Heller had not yet become a Canadian national. I am, however, inclined to agree with the opinion of the learned Deputy Commissioner that the damage sustained in February 1944 was either inconsequential or had been repaired, and that the really substantial damage was caused by artillery bombardment in April or May of 1945.

I accept the computation of the learned Deputy Commissioner as to the quantum of damage as RM 77,800, of which each claimant would be entitled to one-half.

As to the confiscation of rentals retained by the Nazi authorities, this is obviously a "loss of rights to be paid in money", and is therefore a "money claim", as defined on p. 72 of the Report of the Advisory Commissioner. Such

claims must therefore be converted into dollars at the rates of exchange prevailing on 30th December 1949 (p. 73). In the case of German RM, an interim conversion must be made into DM in accordance with the currency revisions of 1948, at the rate of RM 1,000 to DM 65 (p. 97(e)). This will mean a reduction of Samuel Heller's award for rentals to \$54.09, and of Paul Heller's award to \$26.02.

The resulting awards on the Konstanzerstrasse claim would be:

(a) To Samuel Heller:

<i>Tangible Damage</i>	<i>Confiscation of Rentals</i>	<i>Total</i>
\$15,651.14	\$54.09	\$15,705.23

(b) To Paul Heller:

<i>Tangible Damage</i>	<i>Confiscation of Rentals</i>	<i>Total</i>
\$15,651.14	\$26.02	\$15,677.16

With the above-noted change, I am prepared to approve the learned Deputy Commissioner's recommendation so far as it concerns the Konstanzerstrasse property, and to recommend payment of the last-mentioned awards respectively. I feel, however, bound to recommend disallowance of the claims for compensation respecting damage to the other properties concerned which were confiscated and sold in the manner related by the Deputy Commissioner, before the claimants acquired Canadian status.

Although the Deputy Commissioner declined to make any recommendation for payment of expenses, presumably through lack of specific information before him, it is obvious that these claimants incurred considerable expenses both in Germany and in Poland in securing the materials necessary to substantiate the claims which have been allowed. In the absence of detailed vouchers, I would allow each claimant \$350.00.

With the foregoing variations, I approve the reports of the Deputy Commissioner.

I accordingly recommend that there be paid to the claimants the following amounts:

(a) \$81,934.58 to Samuel Heller for loss of property in Poland;

(b) \$81,934.58 to Paul Heller for loss of property in Poland;

(c) \$15,705.23 to Samuel Heller for loss of property in Germany;

(d) \$15,677.16 to Paul Heller for loss of property in Germany; each of the foregoing payments to be in orders of Priority Nos. 3(a) to 6(b) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(e) To Samuel Heller and Paul Heller \$350.00 each as awards for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimants to establish their claims, such payments to be without interest, but not to be taken into account for priority purposes.

Dated this 23rd day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: As the losses occurred in Poland and East Berlin, no alternative compensation is available.

CASE No. 9318

Re: Felix Redlich

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, Dr. Samuel has presented an elaborate written argument supplemented by an oral hearing held before me at Ottawa, in support of the contention that the Deputy Commissioner's recommendation should be reversed, and an award recommended.

This case presents many features similar to those of CASE No. 9319—*Jan and Else Redlich*, and this report should be read in conjunction with my recommendation in that case.

The present case, however, is further complicated by the fact that this claimant did not acquire Canadian national status until 9th April 1945, and that it is therefore more difficult for him to establish the existence of compensable losses arising between that date and the termination of hostilities.

As to the claim for loss of securities, however, there is evidence that the substantial bulk of the claimant's moneys and securities remained in his sub-account until at least 20th April 1945.

The claimant apparently owned a furnished residence at Brno, and a furnished summer house at Slavkov near Brno. He claims \$8,600.00 for loss of the furnishings in those two residences. Though I am not entirely in agreement with the opinion of the learned Deputy Commissioner that the theft or looting of furnishings took place when the Germans entered into possession of and used the property for their own use, I do agree with his conclusion that there is not satisfactory testimony as to just when the actual asportation or destruction of the furnishings took place. I therefore consider that the claimant has not established a compensable loss of those items within the period of the war when he enjoyed Canadian national status.

As to the claims for loss of securities in Prague, share of damage to building at Vezek, share of damage to sugar factory and loss of equipment at Enns, I would act as a jury in the assessment of this claimant's compensable loss on a basis somewhat similar to that applied in the case of his brother *Jan Redlich*—No. 9319; the present claimant's assessment is, however, subject to a more exacting scrutiny owing to the greater contingencies of inference arising from the extreme shortness of his Canadian national status. The total claims of Jan Redlich and the present claimant on those items may be summarised as follows:

Loss of securities:

Jan Redlich	\$112,523.50
Felix Redlich	36,983.12

Damage to Vezek Building:

Jan Redlich	3,104.42
Felix Redlich	2,132.00

Damage to Enns Factory:

Jan Redlich	7,153.97
Felix Redlich	4,802.39

After making due allowance for fluctuations in market values and other contingencies such as the possibility that parts of the present claimant's loss

may have occurred before he became a Canadian or after the termination of hostilities, I would assess his compensable loss as follows:

(1) Czechoslovakia:			
(a)	Loss of securities in Prague:	\$10,000.00	
(b)	Share of damage to building at Vezek:	700.00	\$10,700.00
(2) Austria:			
(a)	Share of damage to Sugar Factory at Enns:	2,500.00	
(b)	Share of loss of movables at Enns:	500.00	3,000.00

As to expenses, I am of opinion that the sum of \$274.00 would fairly reimburse the claimant for the expenses necessarily incurred abroad in the preparation of his compensable claims.

I therefore reverse the recommendation of the learned Deputy Commissioner.

I accordingly recommend that the claimant be paid:

(a) \$10,700.00 as an award for loss of property in Czechoslovakia, such payment to be in orders of Priority Nos. 3(a) to 4(b) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$3,000.00 as an award for loss of property in Austria, such payment to be in order of Priority No. 4(b), and to bear simple interest from 1st January 1946 at 3% per annum;

(c) \$274.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim, such payment to be without interest, but not to be taken into account for priority purposes.

Dated this 23rd day of June, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE NO. 9319

Re: Redlich

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report. On review, Dr. Samuel has presented an elaborate written argument, supplemented by an oral hearing held before me at Ottawa, in support of the contention that the Deputy Commissioner's recommendation should be reversed, and an award recommended.

As to the losses of moneys and securities, Dr. Samuel stresses the contention that prior to April 1945 these assets had been merely seized for forced administration by the German authorities in Czechoslovakia, and had not been confiscated. He therefore argues that the actual loss of the securities occurred at the time of their asportation to Germany in the last weeks of World War II, at a time when the claimants were Canadian nationals. It will be recollected that the learned Deputy Commissioner found the claimant Jan Redlich to have been naturalized on 30th May 1944, and the claimant Else Redlich on 12th June 1944.

It appears from the evidence and from the argument that the expropriation of the claimants' securities took place in three stages: (a) blocking of all

accounts for foreign exchange regulations, partly owing to the claimants' residence abroad; (b) transfer of moneys and securities from the claimants' bank into the forced custody of the Reichsprotector, where they were apparently recorded in sub-accounts in the names of the original owners; (c) asportation to Germany or elsewhere during the last weeks of World War II.

Dr. Samuel cites "Cheshire—Private International Law, 4th Edition, p. 134", and other authorities to maintain that the two earlier stages constituted only a seizure, which is different from confiscation in that it is normally effected for a limited period of time, such as for the duration of a specific emergency. He refers to the Reichsprotector as a department of the enemy occupying authority discharging its duties comparable to those of the Canadian Custodian of Enemy Property. From this contention, he urges that the actual loss of the securities to the claimants occurred at the third stage to which I have referred, and therefore took place at a time when the claimants were Canadian nationals.

It should be remembered that the Nazi authority in Czechoslovakia was never recognized by Canada as the *de facto* government of the country. (See CASE No. 1486—*Whitehead*). Its dealings with the moneys and securities of the claimants were therefore not lawful measures of a constituted government, but were acts of an occupying power and were analogous to brigandage or looting. The important question to decide is therefore whether the looting became effective at the time of asportation, or at one or other of the previous stages when the claimants were not Canadian nationals.

I am prepared to agree with Dr. Samuel's contention that the mere blocking of accounts and securities of non-residents and others for purposes of foreign exchange control does not constitute looting.

I am inclined to agree with the opinion of the learned Deputy Commissioner that the mere maintenance of the so-called sub-accounts with reference to the securities transferred from the claimants' bank to the Reichsprotector would not in itself deprive such transfer of the character of a confiscation or looting. There is, however, evidence that the claimant Jan Redlich received from Zemedelska Banka of Prague a letter dated 11th November 1946, with an enclosure representing a copy of a letter written by the same bank to the Czechoslovakian Minister of Finance on 8th November 1946 from which it appears that on 30th May 1944 there was opened with that bank an account in the name of "Agricultural Enterprise Brno—Zborovice, Vezky Kominka Friess-Redlich" with a first deposit of K1,000; and that the following day an amount of K14,662,525.20 was transferred to the same account "on behalf of the forced administration Friess-Redlich" by the German Administrator of the property Dr. Rudolf Schulze".

The two deposits to which I have last referred do not necessarily relate to any of the securities for whose loss compensation is here claimed. In my opinion, however, the fact of the making of those deposits by the forced administrator lends further substantial weight to the contention of Dr. Samuel that the maintenance of sub-accounts in the names of the claimants and their family was not a mere bookkeeping system, but was intended to be a recognition of the continued ownership of the relative assets by the claimants and other original owners. That being the case, the effective loss to the claimants would be neither the time of blocking nor the time of transfer to the Reichsprotector, but the time of actual asportation of the assets, which occurred after 20th April 1945, and some considerable time after the claimants had acquired Canadian national status.

The claim of Jan Redlich is to the effect that he owned 40.39% of a group of securities asported during the last three weeks of the war totalling K12,663,-291.40. If the claim were fully established this would entitle Jan Redlich to an

award on this item of \$112,523.50, based on the rate of conversion applicable to money claims, namely that of 30th December, 1949.

It is, however, impossible to be certain that all the securities relevant to this portion of the claim were lost to the claimant by a compensable operation of war within the relevant period. There also arises the question of fluctuation in market values of shares of common stock, which we have no means of assessing with accuracy. It is therefore necessary to invoke the function of a jury, and in that capacity I would find that the claimant Jan Redlich suffered a compensable loss of moneys and securities in Czechoslovakia between 20th April and 8th May 1945 in the sum of \$50,000.00.

On a similar basis, the claimant Else Redlich claims \$11,307.57 as her share of the looted securities. For a similar reason, I would assess this claimant's compensable loss of securities at \$5,000.00.

As to the claims for loss of, and damage to, tangible assets, the situation is somewhat different. I have already held in CASE NO. 9288—*Gruber*, and in CASE NO. 4933—*Placek*, that the compensable loss of tangible movables arises upon their destruction, damage, or asportation, rather than upon mere requisition or occupancy for the purpose of use. Though I agree with the learned Deputy Commissioner that the date and circumstances of the loss of tangible assets in this case are not established with satisfactory precision and accuracy, I nevertheless consider that a fair inference may be drawn from the mass of evidence presented that some substantial portion of the losses sustained occurred during the period of World War II when the claimants enjoyed Canadian national status, and more specifically within the last few weeks of the war. This conclusion applies to damage to residential properties at Vezek and loss of furniture there, loss of furnishings in apartment at Vienna, and damage to sugar factory and office building, and loss of movables at Enns in Austria. The claimant Jan Redlich owned 7.2% of the stock in the Enns Sugar Factory, and it appears from the evidence that neither the Company's assets nor Jan Redlich's shares were subjected to any measure of confiscation. His shares were deposited in May 1946 to his account in a London syndicate, and no court intervention for their recovery was required.

In connection with the Enns Sugar Factory, there are also claims for the looting of tools, furniture, vehicles, sugar bags, and sugar cubes; also for coal which was lost in transit and for bad debts arising from emergency services rendered to bombed neighbours. The last two claims mentioned are obviously not compensable under the War Claims Rules, and there is very little certainty as to the quantity of stock and movables originally belonging to the claimant which may have been lost within the period of his Canadian national status. At most, a nominal token award might be recommended for the loss of his share in such movables.

As to the furnishings in the residential establishments at Vezek and Vienna, the damage and looting was undoubtedly considerable, but it is impossible to fix with any certainty the arithmetical value of the goods which were lost in the relevant period. The most I can do with these, and the other compensable claims, is to place myself in the position of a jury.

I would estimate the compensable losses of the claimants as follows:

JAN REDLICH:

(1) Czechoslovakia

- (a) Looting of moneys and securities:\$ 50,000.00
- (b) Damage to Vezek building: 1,600.00
- (c) Loss of furnishings at Vezek: 900.00

\$ 52,500.00

(2) Austria:

(a) Share of damage to Sugar Factory at Enns, and office:	4,000.00	
(b) Share of loss of movables at Enns:	1,000.00	
(c) Loss of Furnishings at Vienna:	500.00	
		<hr/>
		\$ 5,500.00

MRS. ELSE REDLICH:

(1) Czechoslovakia:

(a) Looting of moneys and securities:	5,000.00	
(b) Loss of Furnishings at Vezek:	3,000.00	
		<hr/>
		8,000.00

(2) Austria:

(a) Loss of Furnishings at Vienna:	250.00	
		<hr/>

As to expenses incurred in preparation of the compensable portions of their claims, I consider that the claimant Jan Redlich would be fairly reimbursed in the sum of \$600.00, and the claimant Mrs. Else Redlich in the sum of \$165.00.

I therefore reverse the recommendation of the Deputy Commissioner.

I accordingly recommend that the claimants be paid the following amounts:

(a) to the claimant Jan Redlich for loss of property in Czechoslovakia \$52,500.00, such payment to be in orders of Priority Nos. 3(a) to 6(b) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) to the claimant Jan Redlich for loss of property in Austria \$5,500.00, such payment to be in order of Priority No. 6(b), and to bear simple interest from 1st January 1946 at 3% per annum;

(c) to the claimant Jan Redlich \$600.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim, such payment to be without interest, but not to be taken into account for priority purposes;

(d) to the claimant Mrs. Else Redlich for loss of property in Czechoslovakia \$8,000.00, such payment to be in orders of Priority Nos. 3(a), 3(b), and 4(a), and to bear simple interest from 1st January 1946 at 3% per annum;

(e) to the claimant Mrs. Else Redlich for loss of property in Austria \$250.00, such payment to be in order of Priority No. 4(a), and to bear simple interest from 1st January 1946 at 3% per annum;

(f) to the claimant Mrs. Else Redlich \$165.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest, but not to be taken into account for priority purposes.

Dated this 23rd day of June, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9327

Re: Anderson

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and, on review, have submitted further arguments in support of the contention that the recommendation of the Deputy Commissioner should be reversed and an award recommended.

The submissions made by the claimants on review have been exceptionally elaborate, and for that reason they have served partly to clarify and partly to emphasize the obscurity of the situation.

These claims were presented and heard jointly. The original claim filed by Emil Walter Anderson was for \$4,000.00, apparently including the later claim made by his wife for \$575.00. From the evidence adduced before him, the learned Deputy Commissioner extracted itemized valuations totalling \$3,410.00. As the items listed by the Deputy Commissioner did not include the articles claimed by Mrs. Anderson in the sum of \$575.00, the \$4,000.00 is apparently the approximate total of the \$3,410.00 and the \$575.00.

Mr. Anderson's claim includes the sum of German currency, estimated at Rm. 8,000, which he states that he had in the lining of his clothing in a trunk for the purpose of helping people to get out of Germany. The learned Deputy Commissioner, who heard the oral evidence on this item, was far from being satisfied as to its corroboration and sufficiency. I should not feel justified in disturbing the finding at which he has arrived on the basis of an oral hearing.

Whether, or not, the Rm. 200 was paid to Herr Pirsch, that amount is clearly not compensable under the Canadian War Claims Rules.

Eliminating the alleged loss of currency and payment to Herr Pirsch, there remains an alleged property loss of approximately \$1,935.00. It is evident that some of the goods, such as clothing, luggage, books and dishes survived the war, but were so damaged by mildew, mice, moths and such corruptions, that they were not worth the cost of shipping to Canada.

As to the remainder of the claimants' goods, the learned Deputy Commissioner had no doubt that they did leave considerable goods and chattels in their hotel in Heidelberg, and that the building was commandeered by the Germans during the war and at the conclusion of the war was taken over by the American Army. The Deputy Commissioner was, however, at a loss to determine whether, if looting took place, it occurred during or after the termination of the war. He also found it impossible on the evidence to determine what particular items might have been looted and their value.

As indicated by the learned Deputy Commissioner, the onus is on the applicants to establish the essential facts entitling them to compensation.

Apparently, at a time shortly after the termination of hostilities, the instruments, wireless, and anything which remained of value, had disappeared. Herr Pirsch insisted that the goods had been intact until the Americans occupied his hotel, and he blamed the Americans for taking such goods. It is pertinent to note that one J. Bartholomew, who was apparently officially investigating the matter on behalf of the claimants, expressed the opinion that "this may well be so".

The situation therefore appears to be that some portion of the claimants' goods were looted or requisitioned, either during, or after, the termination of hostilities, but that it is impossible to determine on a strict evidential basis, the identity or value of the goods which may have disappeared during World War

II. To the credit of the claimants, it may be said that they had a fairly complete investigation conducted reasonably soon after the termination of hostilities.

In a number of cases involving a somewhat similar state of uncertainty, the Commission has given claimants the benefit of the doubt to the extent of dividing the balance of probabilities.

In the present case, it is not unlikely that, if the hotel premises were requisitioned by the Germans during the war, and badly needed medical instruments were found on the premises, they also would be looted or commandeered. In the absence of adequate evidence as to just what goods did disappear during the war I would fix at \$600.00 the estimated market value (as of 30th June 1939) of goods so lost.

I therefore reverse the decision of the learned Deputy Commissioner, and I recommend that the claimants be paid jointly the sum of \$600.00 as an award for loss of property in Heidelberg, such payment to be in order of Priority No. 3(a), and to bear simple interest from 1st January 1946 at 3% per annum.

As to the failure of the claimants to prosecute a claim against the German authorities, Mr. Anderson explains this by the fact that on or after 5th August 1953 he received a letter from the Canadian Secretary of State advising him to file a claim to Germany before the end of August 1953. He did not act on the suggestion, because he did not consider that he had time enough to get the necessary forms and to prepare and file a claim. Without commenting on this contention, I may point out that the practice of the Commission has been to place on each claimant in such circumstances the onus of ascertaining alternative sources of compensation and filing of such claims as might validly be prosecuted against such alternative sources. The existence and date of the notice from the Secretary of State are therefore mainly questions of courtesy and are not conclusive against the obligation of the claimants to pursue their alternative remedy, if any.

In my opinion this is a case in which payment in respect of the claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other sources. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Dated this 9th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9328

Re: Roth

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

As the late Mr. Roth initiated the presentation of his claim in his lifetime and did not die until 9 September 1955, it is not necessary to record a finding as to the national status of the beneficiary or beneficiaries of his will.

On review, Mr. Morawetz has submitted an elaborate written argument in support of the contention that awards should be granted in addition to that recommended by the learned Deputy Commissioner. He has supplemented his written submission by an oral argument at a hearing held before me in Ottawa.

As to the first and third branches of the claim, the claimants acquiesce in their disallowance by the Deputy Commissioner. The property in Berlin was, as the Deputy Commissioner points out, confiscated by the Germans prior to the naturalization of Mr. Roth, and was recovered after the war and resold by him in 1953 with an assignment of claims for compensation. Apart from those reasons, the actual war damage occurred on 20 January 1944, before the claimant had acquired Canadian national status. The property in Yugoslavia was confiscated in 1941.

As to branch No. 2 of the claims, relating to loss of warehouse in Vienna, Mr. Morawetz has submitted that the same arguments applicable in CASES NOS. 9891—*Paul Lourie*, and 9890—*Arthur Lourie*, would apply to the present case. It is therefore not necessary to refer in detail to those arguments, since the decision in the present case must obviously follow that in the *Lourie* cases, and this branch of the present claims must therefore be disallowed.

The claimants acquiesce in the recommendation of the learned Deputy Commissioner for payment of \$3,265.81 as compensation for the looting of cash deposits in Czechoslovakia.

There remains to be considered the fifth branch of the claims, which was disallowed by the learned Deputy Commissioner on the ground that Mr. Roth's insurance policies had been confiscated in 1943 at a time when Mr. Roth was not a Canadian. Mr. Morawetz contends, however, that the proceeds of the cash surrender value of the insurance policies were deposited with the German Property Office in Czechoslovakia in an account entitled "Dr. Hugo Roth", and were given a specific number and kept in such account until late 1944, when under the threat of the Russian advance the funds were taken to Berlin, and that therefore Mr. Roth would be entitled to compensation for the looting, or actual asportation, of those funds, which took place at a time when he was a Canadian national.

It is obvious that no compensable claim would exist for any loss which occurred to Mr. Roth through the forced sale of his insurance policies. He would presumably suffer a loss representing the difference between the cash surrender value of the policies and the ultimate benefits which would be receivable under the contracts. He was, however, not a Canadian at the time of the act causing that loss, and is therefore ineligible to claim for it.

As to Mr. Morawetz' contention that the proceeds of the sales were kept in sub-depot accounts and that this recognized a continued ownership by Dr. Roth in the resulting funds, the evidence regarding the existence and nature of such sub-depot accounts does not appear to be very specific in the present case. The learned Deputy Commissioner apparently considered the evidence in the context of the general practice of the German Vermoogensamt in Czechoslovakia respecting such accounts, and found that the proceeds of the insurance policies were earmarked in the name of Dr. Roth. I am, on the whole, inclined to agree with this inference, and to find that the proceeds of the insurance policies, though forwarded to the Vermoogensamt, were kept in a sub-depot account or accounts in the name of Dr. Roth until late in 1944.

That being the case, the state of the claim becomes very similar to that of CASE NO. 9319—*Jan Redlich*.

The amount claimed on this branch of the present claims is \$36,581.11. Though I am satisfied that the claimant suffered a compensable loss relative to this item, it is impossible to determine with certainty that the whole of the loss

occurred between the time when he acquired Canadian national status and the official termination of hostilities. Putting myself in the position of a jury, and making due allowance for all contingencies as to the exact date and circumstances of the loss, I would fix the amount of the compensable claim on this branch at \$20,000.00.

As to expenses, I am of the opinion that \$450.00 would reasonably reimburse the claimants for the expenses necessarily incurred abroad in the preparation of the compensable branches of the claims.

To the foregoing extent I modify the recommendation of the Deputy Commissioner.

I accordingly recommend that the claimants, Mrs. Gertrude Roth and George Moller, as Executors of the Estate of Hugo Roth deceased be paid the following amounts:

(a) \$23,265.81 as an award for loss of property in Czechoslovakia, such payments to be in orders of Priority Nos. 3(a) to 5 inclusive, and bear simple interest from 1st January 1946 at 3% per annum;

(b) \$450.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimants to establish the claim, such payment to be without interest, and not to be taken into account for priority purposes.

I recommend that the branches of the claim relating to losses in France, Yugoslavia, and Austria be disallowed.

Dated this 14th day of July, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9330A

Re: Livia R. Mayer

Deputy Commissioner Hyndman has submitted to me his report on this claim, in which he finds that the claimant was not a Canadian national at the time of her alleged losses.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has submitted an elaborate series of materials and arguments in support of the contention that the Deputy Commissioner's findings should be reversed, and that the claimant should be considered a Canadian at all relevant times, and therefore eligible to claim against the Canadian War Claims Fund.

The claimant stresses particularly the provisions of Article 66 of the Trianon Treaty, enacted on 4th June 1920 between Hungary and a number of other nations, including "the British Empire". The provision relied on is alleged to read as follows:

"For purposes of application of this Article, married women follow in all respects, the status of their husbands, and children under 18, that of their parents."

There is an obvious conflict between the alleged provision of the Trianon Treaty and Section 13 (5) of the *Naturalization Act*. The claimant's contention, however, appears to amount to this: that if, in pursuance of a treaty in force at the time of her loss, the claimant was a British subject (whether so regarded by the statute law of Canada or not) and if her husband had at that time established a domicile in Canada, the wife would be deemed to have

adopted the domicile of her husband at common law, and would therefore have Canadian status under Qualification VI on p. 24 of the Report of the Advisory Commission on War Claims.

The Department of Citizenship and Immigration is of the opinion that the Trianon Treaty would have been terminated on 7th December 1941 by Canada's declaration of war on Hungary. Also that, in any event, the provisions of Article 66 above referred to are limited to the intent and scope of the section itself. That scope appears to have been the resolution of certain problems with respect to nationality and the protection of minorities in Hungary. The Department is of the opinion that a status dependant on a fiction of law in a Treaty that was intended to operate in Hungary at or about the relevant dates in 1920 cannot be imported into Canadian law so as to allow recognition of such status for purposes that were never intended to be covered.

After very careful consideration, I agree with the opinion of the Department of Citizenship and Immigration that the claimant's reference to the Trianon Treaty discloses no grounds pointing to the possession of a status recognizable under Canadian law. For this reason, and the reasons mentioned by the learned Deputy Commissioner, I conclude that the claimant did not possess Canadian national status at the date of her alleged loss, and that she is therefore not eligible to claim against the Canadian War Claims Fund.

I therefore recommend that this claim so far as it is made under the Canadian War Claims Rules and against the Canadian War Claims Fund, be disallowed.

Dated this 25th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

REPORT OF THE ADVISORY
COMMISSIONER ON CLAIMS
UNDER THE TREATY OF
PEACE WITH HUNGARY

Deputy Commissioner Hyndman, to whom this claimant's case was referred, has submitted to me his report, wherein he finds that the claimant was not a United Nations national at the relevant times, and is therefore ineligible to claim for compensation under the Treaty of Peace with Hungary.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has submitted additional materials and arguments in support of her urgent contention that the Deputy Commissioner's finding be reversed, and that she be declared eligible for compensation under the Hungarian Treaty.

I have agreed with the claimant's request for a review to the extent of assuring her that, at the relevant time, her present submissions will be given full consideration. Since, however, there are at present no funds or facilities available for payment of claims under the Treaty of Peace with Hungary, it would appear that a recommendation as to the eligibility of the claimant, or any other person, to claim under the Treaty would be altogether academic in its nature. If such finding were finalized in the present case, fairness would require the making of a similar academic finding in the cases of all claimants who have submitted claims under the Treaty of Peace with Hungary.

This, I think, is beyond the scope of the terms of the reference made to me as Advisory Commissioner. By that reference of 30th November 1953, the Secretary of State requested me to inquire into and report upon all claims by

Canadians arising out of World War II which come within the relevant provisions of the Treaty of Peace with Hungary and also within the provisions of the War Claims Regulations.

I have underlined the words "and also" in the foregoing citation from the reference in order to indicate my interpretation of its terms as applying only to those claims which are valid under the War Claims Regulations, as well as under the Treaty of Peace with Hungary. This limitation of the reference is clearly explained by the provisions of *Order-in-Council P.C. (1953) 554*, which relieves the Commission, in dealing under the War Claims Rules with claims which might also form the subject of compensation under the Hungarian Treaty, from considering such entitlement under the Treaty as satisfaction otherwise provided for. In other words, the bearing of Hungarian Treaty claims on proceedings under the War Claims Rules is purely negative in its character and my present terms of reference do not authorize me to report on individual Hungarian Treaty claims except insofar as they are also valid under the War Claims Rules.

The claimant has stressed the fact that the War Claims Commission is processing Hungarian claims under the authority of *Vote 657* of the supplementary estimates of the Department of Finance for 1953-54. It would, I think, be more accurate to state that the Commission is processing Hungarian claims under the authority of the War Claims Regulations, as amended by *P.C. (1953) 554* (now Section 7 of the Regulations). The relevance of *Vote 657* is solely applicable to the transfer of general assets from one fund to another, and it has nothing whatever to do with the processing or adjudication of individual claims.

In summary, I am of the opinion that a final recommendation on the question of the claimant's eligibility to claim under the Treaty of Peace with Hungary would at the present time be purely academic. I therefore recommend that the finding of Deputy Commissioner Hyndman, to the effect that the claimant is not eligible to claim under the Treaty of Peace with Hungary, remain open for further review if and when appropriate funds or facilities are available for payment of claims under the Treaty, or if and when the terms of reference to the Advisory Commissioner respecting such claims are enlarged.

Dated this 25th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

CASE No. 9331

Re: Butt

At the time of making my recommendation in this case on 1st December 1955, an informal claim for compensation for the death of James H. Coffin was reserved for later consideration. It was then considered open to question whether the compensation received by the claimant and son of the deceased James H. Coffin might be supplemented from the Canadian War Claims Fund.

After careful consideration, I am of the opinion that the late James H. Coffin must be considered to have been a member of a group in respect of which benefits had been provided by way of pension, and that the provision of such pension is deemed by the War Claims Rules (Advisory Commission's Report, p. 31) to have been intended to be adequate and exhaustive.

For that reason I have no alternative but to recommend that the death claim be disallowed.

Dated this 24th day of February, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE NO. 9342

Re: Jarry

...In the light of that evidence I must come to the conclusion that the health of the applicant was affected as a result of the maltreatment suffered at the hands of the Japanese and, as the applicant is unable to return in foreign missions, I think that the cost of training him for that purpose, and fixed at \$1,500.00 in *Father Bleau's case* numbered 9340, would fairly represent the extent of his loss. I therefore lastly recommend for the applicant by way of personal injury an award of \$1,525.85 together with simple interest thereon at the rate of 3% per annum as of January 1st, 1946...
January 23, 1956.

(Sgd) C. W. A. MARION
Deputy War Claims Commissioner

NOTE: Awards confirmed by Chief Commissioner 19 November 1958.

CASE No. 9345

Re: Sime

Deputy Commissioner Hyndman has submitted to me his findings and recommendations, with his reasons therefor.

The claimants have been furnished with copies of the Deputy Commissioner's reports, and, on review, have made further submissions in support of the contention that the award for compensation for the death of Adam Watson Sime should be increased.

I will deal first with the objection taken by Counsel for the claimants to the method of computation of the gross pecuniary loss, namely the capitalization of the lost annual benefits as at the date of Mr. Sime's death. Counsel proposes that the estimate of loss should be arrived at by adding the total of the loss already accrued to the present value of the prospective loss for the remaining seven years of the expectancy period. The suggested method of computation is, of course, quite logical. But, though it would result in an obvious advantage to the claimants in the capital column, the over-all result would be substantially the same. If Counsel's method of computation were adopted, interest would have to be computed on the loss of each particular year as it accrued, and on the prospective loss from the date of adjudication only. Clearly, the only difference on the resulting over-all picture would arise from the fact that the War Claims Rules preclude the addition of compound interest. It is, however, clear that the War Claims Rules, which provide for the computation, on a loss of this kind, of simple interest from the date of the loss, envisaged the capitalization of the total prospective loss as at that date. The only disadvantage accruing to a claimant from this method of computation is the preclusion of compound interest.

My further review of the Deputy Commissioner's decision may therefore begin from his finding that the loss of a prospective annual benefit of \$3,000.00 for a period of 20 years from 14 October 1942 would be represented at that date by a capital sum of \$44,632.42.

I will deal next with Counsel's contention that an additional award should be made on behalf of the sons of the late Mr. Sime. Counsel is correct in his contention that, although the claim was ultimately prosecuted by Mrs. Sime alone, she formally claimed on behalf of the two children of the deceased, who were infants at the time of his death. Apart from the intimation to this effect in Schedule "A" to the Statement of Claim, Rule of Procedure No. 29 provides

that any claim filed in circumstances such as the present shall be dealt with as having been brought on behalf of all persons entitled to the surviving compensation.

It is true that the learned Deputy Commissioner states that, in fixing the compensation payable to the claimant widow, he took into consideration the fact that she had looked after the two sons during their early years and had spent an estimated \$14,000.00 on their education. After further careful consideration of this aspect of the case, I feel bound to agree with Counsel for the claimants that the benefits which the two sons might reasonably have anticipated from their father's income if he had lived out his normal expectancy of life, are not fully reflected in the \$3,000.00 per year estimated as the pecuniary loss of their mother.

On the other hand, the additional \$2,000.00 per year suggested by Counsel for the claimants overlooks three factors which need to be considered: (a) the tendency of present-day youth to earn at least a considerable portion of their maintenance and educational expenses; (b) the probability that paternal support would cease about the age of, say, 23; (c) the fact that the benefits to be expected by the sons would probably be based on the income received by their father in the years when his income would not have reached its peak. Taking these three factors, and other contingencies, into consideration, I am of the opinion that, perhaps on a conservative basis, the gross estimate of pecuniary loss should be increased by an additional sum of \$5,000.00 for David Alexander Sime, and \$6,500.00 for Thomas Watson Sime. Both these figures are intended to represent the 1942 capitalized value of additional anticipated benefits.

On the other side of the picture, I note that the general conclusion of the learned Deputy Commissioner is based on an estimate that the average yearly income of Mr. Sime, had he lived, would be roughly \$10,218.00. Though this estimate is not unreasonable, I am of the opinion that it is subject to a great number and variety of contingencies, including possible illness or accident, which would prevent such an inference from being definite or certain. In allowing such contingencies to weigh against the claimants, I am in part influenced by the principle which I applied in CASE No. 4702—*Mary E. A. Scott*—where I considered that the War Claims Rules are based on an intention to provide reasonable compensation for individuals who suffered war losses, without allowing the awards recommended for any individual claim or group of claims to constitute an undue drain on the portion of the Fund which will be available to meet other classes of Claims. Applying this principle, and taking into consideration the varied contingencies affecting the situation, I do not consider that the average annual gross pecuniary loss suffered by the widow (exclusive of the amounts specifically suggested respecting the two sons) would exceed \$2,500.00. The capitalization of such an annual loss for a 20-year period would amount to \$37,194.00.

On the side of deductions, the claimants' Counsel submits arguments and authorities in support of the contention that the sums received from Workmen's Compensation benefits and from the Imperial Oil Company Survivor Benefits Plan should not be deducted.

Benefits of both these classes have been deducted by the Commission in all analogous cases, and the War Claims Rules appear to render such deduction imperative.

As to the item relating to deduction of benefits received from the estate of the deceased, I agree with Counsel for the claimants that the pecuniary benefit consisting in the acceleration of such a sum is substantially an interest factor. I cannot, however, see that this factor is represented by any sum in the vicinity of the \$1,000.00 suggested by Counsel as an appropriate deduction.

I accept the finding of the learned Deputy Commissioner that the claimant widow received, at the time of her husband's death, the benefit of a net capital estate (exclusive of proceeds of life insurance policies) of \$22,324.00, which she would not have received for approximately 20 years if her husband had lived for the period of his normal expectancy.

The method adopted by the Commission for computation of net acceleration benefit in such cases, is to deduct, from the amount or benefit actually received, the present value (as at time of loss) of the amount which would have been received at the end of the period of life expectancy. The present value in 1942 of a \$22,324.00 benefit anticipated in 1962, would be \$12,360.26. Deducting this present value from the total anticipated benefit, we reach an acceleration benefit of \$9,963.74. Owing to an evident error in transcription, the amount deducted under this item in the Deputy Commissioner's report represented the 1942 present value, rather than the acceleration benefit. On the formula adopted by the Commission for all similar cases, the proper deduction should be \$9,963.74.

The estimate of residual pecuniary loss at which I arrive may be summarized as follows:

Gross pecuniary loss (1942 value)

By widow \$2,500 per year—20 years	\$ 37,194.00
By David Alexander	5,000.00
By Thomas Watson	6,500.00
	<hr/>
	\$ 48,694.00

Less:

Proceeds Survivor Benefits Plan	\$ 5,100.00	
1942 present value of Workmens Compensation		
Benefits, 25 yrs. @ \$50 per month	8,926.48	
Acceleration benefit of		
\$22,324.00 (anticipated 1962)		
less 12,360.26 (capitalized 1942)		
	<hr/>	
9,963.74	9,963.74	23,990.22
	<hr/>	
(1942) Net pecuniary loss		\$ 24,703.78

In view of the fact that the claimant widow has maintained and educated the two sons out of funds legally belonging to her, I think any recommended award might properly be paid to the widow, leaving it to her to share the award with the sons in her own discretion.

With the foregoing variations, I approve the reports of the Deputy Commissioner and I recommend that the claimant, Helen Grant Sime be paid the following amounts:

- (a) \$125.00 as an award for loss of personal property by the late Adam Watson Sime, at the sinking of the SS "Caribou", such payment to be in order of Priority No. 3(a) and to bear simple interest from 14 October 1942 at 3% per annum;
- (b) \$24,703.78 as an award for compensation for the death of her husband, the late Adam Watson Sime, on the same occasion, such payment to be in order of Priority No. (1-2), and to bear simple interest from 14 October 1942 at 3% per annum.

Dated this 6th day of March, A.D. 1956.

Since making my Report dated 6th March 1956 on the above-noted claim for the death of the late Adam Watson Sime, I have had the opportunity of reviewing this claim in conjunction with a number of somewhat similar cases.

At the time of making my previous Report, I was of the opinion that it was necessary to resolve the balance of doubt as to the quantum of the compensable claim against the claimants in cases where a more liberal interpretation of the evidence might give rise to unusually large awards with resulting heavy drain on the Fund, and consequent prejudice to other claimants.

From my present further survey of the claim, in the context of other death claims and claims for other compensable losses (notably CASE No. 4702—*re Scott*), I have now come to the conclusion that it is neither necessary nor proper to apply the principle cited to the circumstances of the present case.

In the absence of that principle, I think the gross pecuniary loss should be increased from \$48,694.00 to \$58,432.42, and the net compensable loss from \$24,703.78 to \$34,442.20,—or an additional \$9,738.42.

Dated this 9th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9348

Re: Aluminium Limited

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

In the course of reviewing this claim, I encountered some difficulty in attempting to reconcile the learned Deputy Commissioner's finding respecting losses at the Gottingen plant with a letter signed by Mr. Braasch and dated 26th November 1946, in which he stated that "the plant was neither enlarged during the war to any extent, nor was it seriously damaged. . . . They suffered no damages to speak of during the war, the plant itself has not been declared for reparations, the majority of the leading personnel were able to continue their work, they suffered no lack of raw materials nor orders and had no other insurmountable difficulties."

I brought this difficulty to the attention of learned Counsel for the claimant, who endeavours to reconcile the inconsistency by suggesting that Mr. Braasch's statement was intended to compare the relatively small damage suffered by the Gottingen plant with the large total capital value of the plant and equipment, as well as with the very serious damage suffered by other plants which were totally destroyed.

In view of the well documented materials, supported by estimates of official German appraisers, I am inclined to agree with learned Counsel's interpretation of Mr. Braasch's reference. The claimant, being a corporation, is apparently not eligible to receive an award under the German Equalization of Burdens Law. . . .

Dated this 12th day of December, A.D. 1958.

By my Report dated 12th December 1958, I recommended payment to the claimant of capital awards totalling \$373,070.12 for damage to property in Germany and loss of property in China, payment to be in orders of Priority Nos. 3(a) to 7 inclusive.

It has since been brought to my attention that on or about 9th December 1952 the claimant received, by special arrangement made under the Treaty of Peace with Italy, payment of a capital award of 160 million lire as compensation for war losses sustained in that country. The Canadian dollar equivalent at the date of that payment would be \$246,440.00.

As the Italian payment was made in respect of a loss entirely different from those concerned in the present claims, it is obviously not deductible from either capital or interest so far as the computation of net compensable loss is concerned. From the point of view of the application of Priority provisions, on the other hand, it appears that the Italian payment must be taken into consideration. The War Claims Rules prescribe that priority should be given to a claimant *qua* claimant and not to a claim *qua* claim (Report of Advisory Commission on War Claims, p. 86). The last-cited provision must be read in conjunction with the provision on p. 85 of the same Report to the effect that "account must be taken in each priority of satisfaction otherwise provided for".

The combined effect of the priority provisions which I have noted is that by receipt of \$246,440.00 as compensation for losses in Italy, the claimant has not only exhausted its capital entitlement under orders of Priority Nos. 3(a) to 6(b) inclusive, but has encroached to the extent of \$146,440.00 on the *pro rata* payments to which it may from time to time become entitled under order of Priority No. 7. This finding is, of course, based on the amending provision of the *Schedule* to the *War Claims Regulations*, now appearing as clause 6(b) of section 4, whereby an additional priority rating of \$50,000.00 was inserted between the original Priority orders Nos. 6 and 7.

As a result, the claimant will not be entitled to any capital payment on the Priority orders up to and including No. 6(b). In assessing the claimant's capital entitlement under Priority No. 7, the sum of \$146,440.00 must be deducted from each capital payment to which the claimant would from time to time become entitled if it were not for the receipt of the Italian award. In other words, the formula for computation of capital payment under order of Priority No. 7 at any given time will be as follows: \$273,070.12 multiplied by the cumulative *pro rata* percentage applicable to payments under order of Priority No. 7 at that particular time, minus \$146,440.00, minus capital payments, if any, already received under order of Priority No. 7.

As to interest, the situation is somewhat different. I have already indicated that the Italian award was made in respect of losses entirely different from those here concerned. The use of the money received under the Italian award does not, therefore, involve any deduction from or adjustment of interest in respect to awards for losses in Germany and China. As the War Claims Rules provide that interest should not be taken into account for priority purposes, the claimant should now receive (under orders of Priority Nos. 3(a) to 6(b) inclusive) simple interest on \$100,000.00 from 1st January 1946 at 3% per annum. As and when general payments are authorized under the provisions of order of Priority No. 7, the claimant should receive simple interest from 1st January 1946 at 3% per annum on such capital amounts as it would from time to time be entitled to receive had it not been for the Italian award, even though no capital sums may then be paid to it.

I therefore amend the recommendations contained in my Report of 12th December 1958 by now recommending that the awards for property losses in Germany and China, and interest thereon, be paid to the claimant according to the foregoing priority provisions.

Since expenses allowed for establishing claims are not to be taken into account for priority purposes, I confirm my previous recommendation that the expenses award of \$800.00 be now paid to the claimant without interest.

Dated this 11th day of March, A.D. 1959.

By my Report dated 12th December 1958, I recommended payment to the claimant of capital awards totalling \$373,070.12 for damage to property in Germany and loss of property in China, payment to be in orders of Priority Nos. 3(a) to 7 inclusive.

It has since been brought to my attention that on or about 9th December 1952 the claimant received, by special arrangement made under the Treaty of Peace with Italy, payment of a capital award of 160 million lire as compensation for war losses sustained in that country. The Canadian dollar equivalent at the date of that payment would be \$246,440.00.

The payment under the Treaty of Peace with Italy gives rise to two important changes in the present situation:

A. Award under War Claims Rules for loss in Italy

Awards under the Treaty of Peace with Italy were based on two-thirds of the 1952 (October 27) replacement value of the properties lost or damaged. Awards under the War Claims Rules for the corresponding losses were based on the reasonable market value as at 30th June 1939. The experience of the Commission is that Italian Treaty awards, although representing only two-thirds of the replacement value, are greater than the capital amounts of corresponding awards under the War Claims Rules. On the other hand, awards under the War Claims Rules normally bear interest, and it usually happens that the capital plus interest of an award from the War Claims Fund for loss in Italy is greater than the capital award under the Treaty of Peace with Italy for the same loss, since the latter does not bear any interest.

In the case of the present claimant, the payment of 160 million lire under the Treaty of Peace with Italy represented two-thirds of an assessed loss of 240 million lire valued as of 27 October 1952. The best evidence available as to fluctuation of currency and commodity prices in Italy would lead to the conclusion that the 240 million lire in 1952 would be the equivalent of 4,500,-608.37 lire as of 30 June 1939. The Canadian equivalent of the latter amount would be \$237,542.11. The claimant would accordingly be entitled to an award from the War Claims Fund for its losses in Italy in the sum of \$237,542.11 plus interest on that amount from 1st January 1946 at 3% per annum, minus \$246,440.00, being the Canadian dollar equivalent of the Italian Treaty payment, with interest adjustment from 9th December 1952. The amount of interest relative to \$100,000.00 of the award could be paid immediately, pursuant to the terms of Orders of Priority Nos. 3(a) to 6(b) inclusive. The balance would be payable proportionately from time to time as and when capital payments are authorized under the terms of order of Priority No. 7.

B. Orders of Priority re losses in Germany and China

As the Italian payment was made in respect of a loss entirely different from those concerned in the claims for losses in Germany and China, it is obviously not deductible from either capital or interest so far as the computation of net compensable loss under those claims is concerned. From the point of view of the application of Priority provisions, on the other hand, it appears that the Italian payment must be taken into consideration. The War Claims Rules prescribe that priority should be given to a claimant *qua* claimant and not to a claim *qua* claim (Report of Advisory Commission on War Claims, p. 86). The last-cited provision must be read in conjunction with the provision on p. 85 of the same Report to the effect that "account must be taken in each priority of satisfaction otherwise provided for".

The combined effect of the priority provisions which I have noted is that by receipt of compensation for losses in Italy the claimant has not only

exhausted its capital entitlement under orders of Priority Nos. 3(a) to 6(b) inclusive, but has encroached on the *pro rata* payments to which it may from time to time become entitled under order of Priority No. 7. This finding is, of course, based on the amending provision of the Schedule to the War Claims Regulations, now appearing as clause 6(b) of section 4, whereby an additional priority rating of \$50,000.00 was inserted between the original Priority orders Nos. 6 and 7.

Since, by the War Claims Rules, interest is not to be taken into account for priority purposes, the amounts which must be so considered will be the larger of the capital amounts received for the Italian losses, namely the sum of \$246,440.00 paid under the Italian Treaty. It will therefore appear that the claimant has encroached on its *pro rata* payments under Order of Priority No. 7 to the extent of \$146,440.00.

As a result, the claimant will not be entitled to any capital payment on the Priority orders up to and including No. 6(b). In assessing the claimants' capital entitlement under Priority No. 7, the above-noted encroachment of \$146,440.00 must be brought into the hotchpot with the capital awards for losses in Germany and China. In other words, the formula for computation of capital payment under order of Priority No. 7 at any given time will be as follows: \$373,070.12 plus \$146,440.00 and the total multiplied by the cumulative *pro rata* percentage applicable to payments under order of Priority No. 7 at that particular time, minus \$146,440.00, minus capital payments, if any, already received under Order of Priority No. 7; the total of capital payments to be received under Priority No. 7 not to exceed \$373,070.12.

Each capital payment on the award for losses in Germany and China should bear simple interest from 1st January 1946 at 3% per annum.

I therefore amend and supplement the recommendations contained in my Report of 12th December 1958 by now recommending:

(a) That the claimant be paid from the War Claims Fund the sum of \$237,542.11 as an award for loss of property in Italy, such payment to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$246,440.00 received under the Treaty of Peace with Italy, with interest adjustment from 9th December 1952. As to priority of payment the amount of interest relative to \$100,000.00 of the award may be paid forthwith, pursuant to the terms of orders of Priority Nos. 3(a) to 6(b) inclusive; the balance of interest would be payable proportionately from time to time when capital payments are authorized under the terms of order of Priority No. 7, but would be deferred until completion of payments of capital and interest respecting awards for property losses in Germany and China;

(b) That the awards for property losses in Germany and China, totalling \$373,070.12, and interest thereon, be paid to the claimant in order of Priority No. 7 and in accordance with the above-noted formula;

(c) Since expenses allowed for establishing claims are not to be taken into account for priority purposes, I confirm my previous recommendation that the expenses award of \$800.00 be now paid to the claimant without interest.

Dated this 27th day of May, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9349B

Re: Charles Borkenhagen

This is a claim for a 50% share in an alleged loss of \$22,400.00 caused by Allied air raids to a block of flats and a group of industrial buildings at Kiel, Germany.

The claim was referred to Deputy Commissioner Hyndman, who heard the evidence in Montreal and submitted to me his findings and recommendation, with his reasons therefor. The learned Deputy Commissioner recommended disallowance of the claim on the ground that the claimant had collaborated with or assisted the enemy in its war effort.

The claimant was furnished with a copy of the Deputy Commissioner's report. On review, he re-emphasizes his contention that his service in the German Army in World War II was limited to eight months in a Reserve Unit, which did not have any front line service, but which was engaged in "training the men". Also that his service was not undertaken voluntarily, but was the result of a compulsory call-up by the German authorities, who regarded him as being of dual nationality.

The case is very similar to No. 10,017—*Re Woelfle*, in which I held that the word "voluntary" in the context of collaboration or assistance to the enemy does not necessarily imply any initiative on the part of a claimant in volunteering. As the present claimant himself points out, the alternative to military service with the Germans might have been "internment, concentration camps, and compulsory labour force". But, in not insisting on that alternative as a Canadian national, the claimant virtually chose to accept military service in the enemy's forces.

It would, indeed, be incongruous if the interpretation of the Rules allowed a dual national to exercise an option which was not open to one who possessed only Canadian status.

As a matter of fact, the Rules specifically provide that (with one exception, not applicable here) "no consideration should be given to a claim from a Canadian who at the time of loss possessed a second nationality, and who was at that time domiciled in the country of his second nationality".

For that reason, as well as for the reason of collaboration mentioned by the learned Deputy Commissioner, I have no alternative but to approve his recommendation without variation, and I therefore recommend that this claim be disallowed.

Dated this 21st day of March, A.D. 1960.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9358

Re: Orford

The applicant claims as a dependent of said soldier, No. F.26412, Acting Lance Corporal in the Canadian Forces, who was made a prisoner of war by the Germans on the 7th June, 1944 and maltreated having been shot or murdered by his captors on the same day while unarmed, allegedly under the order of General Kurt Meyer in contravention of the recognized rules of war.

The fact of the deceased's capture and undoubtedly murder by the enemy is to my mind clearly proved by the following extract from a letter written to the applicant by the Deputy Minister of the Department of National Defence on the 3rd April 1950, as follows:—

"The McLean's Magazine article which was brought to your attention is based upon an examination by Mr. Allen of the record of Kurt Meyer's trial in the possession of this Department. The extract from that record used in the article, and which gives the testimony of a witness who stated he saw your son die, is correctly quoted. The evidence of this and other witnesses at Kurt Meyer's trial clearly supports the conclusion that your son met his death at the hands of the enemy while an unarmed prisoner in contravention of the recognized rules of war."

It seems to me that no further proof should be necessary than that contained in said letter which must be regarded as official, and presumably the result of investigation of this regrettable incident. But further on this aspect of the case I have had the advantage of perusing the official report of the trial of Kurt Meyer from which I extract the following:—At page 226 from the evidence of F.76107, Private Conrod, J. A. of North Nova Scotia Highlanders:—

Q. 959. *Do you know any of the others in the party?*

A. *Lance Corporal Orford and Arseneault.*

At page 227—

Q. 967. *Now can you describe the nature of this shooting?*

A. *When the shooting started, Sir, I turned around to my right. There was a German soldier, and he was firing. The rear guard had his rifle pointed toward the ground and looked to be working the bolt. After the shooting started the men commenced falling and I noticed Orford and Arseneault together. Corporal McLeod had ducked down. I wanted to stop and Private Dooland nudged me in the knee and he said to keep marching.*

Q. 970. *And how many of you then continued along?*

A. *McLeod joined us, the only one of the group.*

Q. 971. *Do you know what happened to the other nine?*

A. *They were shot down when moving off.*

Q. 972. *Have you seen either Orford or Arseneault since that time?*

A. *No Sir.*

Page 228—

Q. 977. *And did you have a reasonable good view of him?*

A. *Yes Sir.*

Q. 978. *How far was he from you, or let's say Orford at the time of the shooting?*

A. *About 20 feet from me, Sir.*

Page 229—

Q. 1157. *Now, was Taylor a member of your section or platoon?*

A. *Yes, Taylor was my 2 i/c of the section. The next NCO I seen shot was Corporal McKinnon. He fell forward and landed on his face quite still. Within a moment or so after he was shot, I heard another shot and Corporal Arseneault fell forward on his face. When he fell forward on the ground on his face the German soldier came up with a rifle. Pointed it at the back of his head and pulled the trigger.*

Q. 1158. Was Arsenault, as a consequence of this, shot a second time?

A. Yes Sir.

Q. 1159. And the second shot struck what part of his body?

A. I would say the base of the skull. It was down low on the back of the head.

Assuming then that the deceased soldier was shot to death by his captors in violation of the rules of war accepted by the enemy under the Geneva Convention, it would appear to me that no worse case of maltreatment can be imagined. It is true that perhaps he did not suffer for any appreciable length of time, but to say that deliberately and in cold blood taking a man's life is not maltreatment is something I find difficult to understand.

It is also established in the trial of Kurt Meyer that the captors of deceased soldier were members of a criminal organization, the SS. If he had lived, under the rules he would be entitled to one dollar a day for each day of imprisonment. Under this provision he would be entitled to \$1.00, which in effect means practically nothing.

In the Ilsley Report it is stated that maltreatment awards are not to be based on pecuniary loss, but are in the nature of *solatium* to persons maltreated, and highly personal in character. It is also provided that such claims survive for the benefit of certain persons, including in this case the father, if of course, a dependent.

The Sumner Report, adopted under this Commission, provides that an award for maltreatment of a person held as a prisoner of war or interned in the European theatre of war may be granted only if the claimant proves:—

that maltreatment existed in his individual case: and, in addition,

(a) that incapacity to work was the consequence of such maltreatment; and

(b) that such incapacity to work subsisted after liberation.

In this instance, of course, permanent incapacity was the immediate and direct result of his maltreatment and sudden death. There was no "liberation" in the sense of the rules except by death. In many cases P.O.Ws. died during internment and before liberation, but such has not operated as a bar to claims by survivors in respect of maltreatment. It would seem therefore that actual "liberation" must be regarded in such cases as this as immaterial.

That he, or his dependent survivors, is entitled under the rules to \$1.00 is clear, but to confine it to that amount leads to absurdity.

Under P.C. 1953-857, the Chief War Claims Commissioner was directed "to inquire into and report upon conditions in civilian internment and military prison camps in Europe, in which Canadians were interned or imprisoned during World War II, with a view to ascertaining whether maltreatment prevailed, sufficiently serious, general and prolonged to justify the payment of an automatic award to Canadians held in such camps, or any of them, for the duration of their internment or imprisonment or of any part of it."

Pursuant to said order in Council, the Chief War Claims Commissioner made his report, which was accepted by the Government.

At page 32 of the Report, I extract the following:— "and (c) a special individual award for any unusually serious maltreatment established by an individual claimant—in such sum as the proper tribunal may consider just and equitable to recommend, in view of the objective severity of the treatment or its subjective effects upon the individual maltreated."

It seems to me that on a liberal interpretation of the said article "c" this claim should be recognized as falling within it justifying an award of a lump sum as *solatium*, and an exception to the general rule of an award of the nominal sum of \$1.00. If said article "c" does not include a case of this character, I find it difficult to think of a more worthy instance for the application of it.

The Department of Veterans Affairs has regarded the applicant as a dependent which I think should be held sufficient proof of dependency.

I therefore recommend an award in favour of the applicant in the sum of \$300.00.

Dated this 19th day of April A.D. 1955.

(Sgd) J. D. HYNDMAN

Deputy War Claims Commissioner

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

This is the first of a group of claims made by dependents of deceased members of the armed services who met their death at the hands of the enemy, while unarmed prisoners of war, in contravention of the recognized rules of war. The relevant evidence has been very carefully considered by the learned Deputy Commissioner and summarized in his report. I agree with his conclusion that the unlawful killing of the claimant constituted maltreatment, and that it would be difficult to imagine any worse case of maltreatment.

The remaining question is whether, or not, such maltreatment is compensable under the War Claims Rules.

There are two sets of circumstances in which the Rules regard maltreatment as being compensable:

- (a) If the maltreated person was in the custody of the Gestapo or other criminal organization, such as the SS;
- (b) If the maltreatment caused incapacity to work, which subsisted after liberation.

Under the former set of circumstances, the normal award was limited to \$1.00 *per diem*, which would not be a substantial *solatium* for maltreatment so severe as to cause death. Under the latter set of circumstances, a literal interpretation of the test might lead to the conclusion that maltreatment is compensable only in cases where the maltreated person was eventually liberated from internment and was incapacitated for work during at least some period after his liberation. Such an interpretation would, however, run counter to the practice of the Commission in recommending the survival of maltreatment claims in cases where the persons maltreated during a period of their internment died before liberation, either as a result of the maltreatment or otherwise. Such an interpretation would also appear to be inconsistent with common sense and equity: because it would imply that, of two persons who were interned and maltreated together, the one who was fortunate enough to survive for a short period after his liberation would be entitled to a maltreatment award, whereas the other (perhaps for the very reason that he was more severely maltreated) who died during internment would not be entitled to any maltreatment award or to its survival.

This distinction seems so illogical that it was not even considered by the Commission, and we have followed the practice of recommending awards to surviving dependents of maltreated persons whether the latter died after liberation or during internment.

The logical conclusion from this practice is that incapacity subsisting after liberation is regarded, not as a substantive basis of compensation for maltreatment, but rather and merely as a procedural test of the seriousness of an alleged period of maltreatment. Such being the case, actual liberation is not an essential prerequisite of the making of an award for compensable maltreatment. In the present case, maltreatment has been established; and the seriousness of that maltreatment is attested by a criterion more specific than that of liberation and subsisting incapacity. I agree with the learned Deputy Commissioner that an award should be available for the benefit of the claimant as the established dependent of the deceased serviceman.

I therefore approve the report of the Deputy Commissioner without variation, and I recommend that the claimant be paid \$300.00 as an award for maltreatment of his son, the late Douglas S. Orford, whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 21st day of April, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: *This recommendation was not approved for payment by the Treasury Board.*

CASE No. 9359

Re: Laws

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, though the evidence is not as complete as might be desired. It is evident, however, that the claimant has been diligent to secure all the evidence which is reasonably available in support of her claim.

The learned Deputy Commissioner appears to have entertained some doubt as to the claimant's Canadian status at the time of the "Danzig" loss, as she had not acquired "Canadian domicile" in the statutory sense until August 1943. It appears, however, that the claimant became a British subject by virtue of her marriage to a British subject of Canadian birth in 1936, and that she came to Canada for permanent residence on 25th August 1938. Although her statutory domicile would not be established until five years after her landing for permanent residence, she would, at common law, acquire a domicile in Canada from the time when she established her residence here with the intention of remaining permanently. I am therefore of the opinion that the claimant acquired a common law domicile of choice in Canada at least as early as 25th August 1938, and I think it is also arguable that even before that date she had at common law adopted the domicile of her husband. The claimant would therefore clearly be qualified from the point of view of Canadian national status at the time of the loss, under provision (vi) of the qualifications set forth on page 24 of the Report of the Advisory Commission on War Claims.

For purposes of direction as to payment and as to orders of priority, it is necessary to segregate those portions of the award which relate to the factory near Danzig in former German territory, which is now under Polish control, and to the real property and household goods situate in Berlin-Charlottenburg, which is now within the Republic of Western Germany. The amount of the award relative to the Danzig property is \$21,261.00 and that relative to property in Western Germany is \$4,292.00.

The amount of compensation likely to be received, or deemed to have been received from the West German authorities must be deducted from the latter portion of the award. It must also be deducted from any immediate payment to be made, whether on the Polish or West German property, for the purpose of determining priority of payment. In other words, the award now recommended for property lost at Danzig is subject to immediate deduction (from the point of view of priority) of the amount received or deemed to have been received by the claimant from any source, though such amount is not necessarily deductible from the sum ultimately to be paid on this item. The last mentioned requirement arises from the fact that the claimant has only one priority of payment in respect of all branches of her claim to compensation.

This is a case in which payment in respect of the portion of the claim arising in Western Germany may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to *War Claims Regulation 4(4)*) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Subject to the foregoing reservation, I recommend that the claimant be paid:

- (a) \$21,261 as an award for loss of property at Danzig, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b) and 5, and to bear simple interest from 1st January 1946 at 3% per annum;
- (b) \$4,292 as an award for loss of property in what is now the western sector of Berlin, such payment to be in order of Priority No. 5, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 8th day of June, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9368

Re: Barrington

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and has waived presentation of further materials on review, except to dispute the validity of deduction of "accident insurance" from the award of \$130.00 found by the Deputy Commissioner to represent pecuniary loss due to the death of the late Harriet Barrington.

The so-called accident insurance, apparently amounting in fact to \$455.00, represented the proceeds of "accidental means death benefits" forming part of three life insurance policies on the late Mrs. Barrington's life.

The claimant contends that the operative words of the relative portion of the War Claims Rules, as based on the recommendation of the Advisory Commissioner, refer to the distinction between "life insurance policies" and "policies of insurance against accident". It would therefore, on the claimant's

submission, be necessary to decide what type of policy each one was, taken as a whole. On that basis, each policy would be a life insurance policy with at most an incidental accident feature, and payments made under them would be made under "life insurance policies" and not under "policies of accident insurance".

I am unable to accept the definition suggested by counsel for the claimant, as I consider it equitably irrelevant whether a contract of accident insurance is contained in a separate policy or whether it is made an incident of a life insurance policy. It is contended by the claimant that the double payment feature of a life insurance policy is not a contract of indemnity, because it has no relation to the extent of loss suffered. The same argument would apply to a contract of accident insurance contained in a separate policy. The amount of the indemnity would not necessarily bear any relation to the pecuniary loss suffered by the beneficiary.

I therefore have no alternative but to agree with the learned Deputy Commissioner that the pecuniary loss suffered by the claimant through the death of his wife, so far as it is compensable under the War Claims Rules, has been more than compensated by receipt of the proceeds of policies of insurance against accident.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, except as to the date at which the claimant is deemed to have received the British *ex gratia* award. In this respect, I would give the claimant the benefit of the latest approximate date at which such awards were paid, namely the end of June 1949.

I therefore recommend that the claimant, as administrator of the estate of Harriet Barrington, be paid \$400.00 as an award for loss of property on the occasion of the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3 (a), and to bear simple interest from 3rd September 1939 at 3% per annum; subject to deduction of \$150.00 deemed to have been received from the Government of the United Kingdom, with interest adjustment from 30th June 1949.

For the reasons mentioned by the learned Deputy Commissioner, and the reasons mentioned above, I must recommend that the claim for pecuniary loss due to the death of Harriet Barrington, as well as claims for transportation of the claimant and son to England and for living expenses in that country must be disallowed.

Dated the 1st day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9372

Re: *Danson*

...He left Mulgrave to return to his home in St. John's and was a passenger on the "*Caribou*" when that vessel was attacked and sunk. He was in the water for a few minutes clinging to a piece of wreckage and was then helped onto a raft by other survivors. He was on the raft for about three-quarters of an hour and then he and his companions were rescued by an escort vessel. During the period that he was on the raft he cared for an unknown baby but it died in his arms before the rescuing vessel arrived.

The medical evidence produced by the claimant establishes that on his return to St. John's he was suffering from shock and from the effects of severe and prolonged exposure. The exposure had brought on a fairly severe neuritis of the legs, and his heart action was irregular for a time. His general condition,

which at first bordered on exhaustion, continued to be poor for some time. Although his condition was not then diagnosed as a cardiac condition subsequent events indicate fairly clearly that the shock he had suffered had affected his heart. At the hearing Commander Grant testified that he had known the deceased for about a year before the disaster, and that during that time he was quite healthy and extremely active and devoted himself whole-heartedly to his business and to community affairs.

From then on his health appears to have gradually deteriorated, and his ability to work gradually declined. He was 53 years old at the time of the "Caribou" sinking, and until that time had always enjoyed good health. He gave up his business in St. John's in the late summer of 1944, and at Christmas of that year he had a heart attack in Toronto where he was then living. He had a second heart attack when visiting his daughter and son-in-law at St. Hyacinthe in the early summer of 1945, and a third in Oakville in 1947. From October, 1942, onward he had had treatment for his condition from various doctors including Dr. Marshall of St. John's, Dr. Gagnon of St. Hyacinthe, and Dr. Dixon of Oakville under whose care he was for approximately two and a half years.

There seems to be no doubt that the experience of Mr. Danson arising out of the torpedoing and sinking of the "Caribou" seriously affected his health and his ability to work. Although he tried to re-establish himself in business, first in Toronto and later in Oakville and Ottawa, he could not do so because of his gradually declining state of health. During the last few years of his life he was not able to work at all. I find, on the documentary and oral evidence produced, that his health was seriously affected by his experiences on the morning of October 14, 1942, and that his earning power was thereby appreciably reduced. I find the claim made by his widow and administratrix for his personal injury very moderate and I would allow it in full. (\$1200.00) . . .

JAMES FRANCIS, Q.C.

Deputy War Claims Commissioner

Dated this 24th day of June, A.D. 1955.

NOTE: Awards confirmed by Chief Commissioner, 20 October 1955.

CASE No. 9384

Re: MacKinnon

Deputy Commissioner Hyndman has submitted to me his findings and report on this claim, dated 27th December 1955, in which he recommended the disallowance of the claim; also a supplementary report, dated 30th January 1956, in which he confirms his recommendation for disallowance.

The claimants' Solicitors have recently submitted a written argument in support of the contention that the Deputy Commissioner's recommendation should be reversed, and an award recommended by the Commission.

The claimants apparently acquiesce in the disallowance of all items in this very large claim, with the exception of \$5,296.00 for loss of personal clothing and effects, and \$91,763.00 for furnishings of apartment in Paris.

On 10th December 1947 the late Mr. MacKinnon valued these items at \$3,600.00 and \$55,000.00 respectively. The Assistant Deputy Custodian, Department of the Secretary of State, wrote Mr. MacKinnon on 23rd December 1947 to the effect that the inventory should be an itemized one, with separate valuations showing how the \$55,000.00 and the \$3,600.00 were made up. Mr. MacKinnon wrote the Department of the Secretary of State on 26th November 1948 to the effect that he was unable at that time to give full details of the

items concerned. It is not clear how the claimants were able to arrive at the minutely itemized valuations which they have submitted to the Commission, and which are so greatly in excess of the valuations originally submitted by Mr. MacKinnon.

Apart altogether, however, from the difficulty which would arise in arriving at the reasonable market value of the goods formerly owned by Mr. MacKinnon, there is a much more serious difficulty of determining whether, or not, their loss was directly caused by operations of war during World War II.

The War Claims Rules provide that where the physical loss or disappearance of tangible things has occurred in an area occupied by an enemy, looting should be conclusively presumed where the cause of the loss or disappearance cannot be established. If, therefore, the claimants were able to establish with reasonable certainty that the lost goods were in Mr. MacKinnon's apartment in Paris at the time of the German occupation of the city, and that the goods had disappeared by the time of cessation of hostilities, the Commission would be entitled to presume that the goods had been looted, and the loss of the property in such circumstances would be admitted as a war claim whether the looting was done by members of armed forces or not.

After a very careful study of the evidence and other materials before the Commission, I am impelled to agree with the conclusion of the learned Deputy Commissioner that it has not been established with any reasonable degree of certainty that Mr. MacKinnon's goods were in his former Paris apartment at the time of the German occupation.

It does appear from the evidence that Mr. MacKinnon and his wife had a large number of valuable furnishings and effects in an apartment in Paris up to 1937. They apparently lived and entertained on a sumptuous, and perhaps extravagant, scale. It is suggested that, when travelling, Mr. MacKinnon was in the habit of engaging the most expensive suites at the best hotels. In 1937, Mrs. MacKinnon left Paris and went to live in the United States. Sometime afterwards, Mr. MacKinnon ceased to live in the apartment and took up residence in a small hotel in the vicinity. The date of that change of residence is not established, but from Mr. MacKinnon's letter of 27th July 1937, written to his wife from London, it is clear that his furniture and personal belongings had been "seized", presumably in connection with some civil or municipal indebtedness. In his letter, Mr. MacKinnon went on to say that he wanted to have the seizure lifted and that then he would remove the stuff. That statement of Mr. MacKinnon's is in reality the last specific information which is before the Commission as to the existence or whereabouts of the goods concerned. It is significant that the Assistant Deputy Custodian, in his letter of 23rd December 1947, requested Mr. MacKinnon to advise fully as to what had been done in the direction of tracing the household goods and personal effects claimed, and to inform the Custodian's Office as to how the loss occurred. This request was repeated in a letter written by the Director of the War Claims Branch on 14th December 1948. No further information appears to have been supplied by Mr. MacKinnon in response to either request.

The whole situation seems to me to fall far short of providing an adequate basis for a reasonable inference that the goods belonged to Mr. MacKinnon at the time of the German Occupation and that they were then in his former apartment in Paris.

I agree with the opinion of the learned Deputy Commissioner that the claim must be disallowed, and I so recommend.

Dated this 1st day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9394

Re: Sachs

Deputy Commissioner Hyndman has submitted to me his findings and recommendation for the disallowance of these claims, with his reasons therefor, and the claimants have been furnished with a copy of his report.

On review, Dr. Samuel, as counsel for the claimants, has submitted a series of written arguments, supplemented by a very able oral presentation before me at Ottawa. On other occasions, in the absence of Dr. Samuel, Mr. C. Fraser Elliott, Q.C., accompanied on one occasion by the claimant Mrs. Helen Sachs, in person, appeared before me and presented further aspects of the claims.

I have very carefully reviewed the Deputy Commissioner's report in the light of the additional materials presented by Dr. Samuel and Mr. Elliott.

In regard to the claim of Charles J. Sachs for loss of an art collection destroyed at the time of the burning of the City Hall in Prague, the claim has been pressed through two alternative channels. By one channel Mr. Sachs claims that he was the sole owner of the art collection by reason of a pre-war absolute gift from his father, the late Leopold Sachs. By the other channel, Mr. Sachs claims to have become the owner of a one-half interest in the collection by virtue of the Will of his father dated at Toronto 5th March 1940. Mr. Leopold Sachs had come to Canada and had become domiciled in the Province of Ontario where he died on the 27th May 1941.

I find myself entirely in agreement with the opinion of the learned Deputy Commissioner that the evidence submitted is not such as to warrant an inference of a gift *inter vivos* from Leopold Sachs to his son Charles J. Sachs. In fact, the circumstances disclosed by the evidence seem rather to negative the existence of such a gift. Mr. Leopold Sachs continued to deal with the collection as his own, and made a donation of it to the City of Prague in March 1939 without consulting his son; and Dr. Samuel admits that Charles Sachs had not learned of the alleged donation to himself at the time when he filed a claim with the Custodian's Office in respect of a one-half interest in the collection.

His claim as one-half owner under the father's Will is perhaps more difficult, but its consideration leads me to the same conclusion, in agreement with the opinion of the learned Deputy Commissioner. The claimant relies strongly on some ambiguous phrases in a letter from Dr. Josef Morak dated 9th October 1945. The letter, however, refers to the collection as having been "donated", and "transferred to the City of Prague", and in a later letter dated 20th May 1955, Dr. Morak enlarges on the details of the donation and its acceptance by the City. It would be difficult to rely on the ambiguous expressions in the 1945 letter so as to conclude that the donation and acceptance were a mere subterfuge to deceive the Gestapo and other Nazi agencies. Dr. Samuel stresses the danger to which Dr. Morak might have exposed himself by explicit disclosure of the alleged subterfuge. The existence of such danger seems difficult to understand in view of the fact that at the time of both the 1945 letter and the 1955 letter, governments were in power in Czechoslovakia which were diametrically opposed to the former operations of the Nazis and their Gestapo. But even if Dr. Morak's ambiguity was due to fear of reprisal, his expressions are not sufficient to establish a resulting or continuing trust in favour of the late Mr. Leopold Sachs and his legatees. Nor is it understandable why the late Mr. Sachs, if he regarded himself as continuing to be the equitable owner of the art collection, would not have made some reference to it in his will, (particularly as the evidence discloses his intense desire to have the collection preserved as a unit), or would not have made some memorandum of the actual state of facts at some time during the remainder of his life in the free country of his adoption.

After full consideration, I agree with the conclusion of the Deputy Commissioner that, so far as the main art collection was concerned, the claimant, Charles J. Sachs, never became its owner either by gift or legacy from his father.

There is, however, abundant evidence that, in addition to the main unit of the collection, the late Mr. Sachs had accumulated a number of duplicate etchings and other items. These he specifically reserved at the time of his donation to the City of Prague, and they were segregated from the main section and stored in boxes to be forwarded to him abroad. Owing to the outbreak of war, the delivery of the duplicates to Mr. Sachs was never consummated and some of them remained in the City Hall and were destroyed at the time of the fire. Others were secreted by Dr. Morak and concealed at various places throughout the war, and were delivered to Charles J. Sachs after the conclusion of hostilities.

I am inclined to the view that there is a valid limited claim in respect of those duplicates which remained in the City Hall and were destroyed at the time of the fire. That fire occurred during the last few days of the hostilities and continued perhaps through 9th May 1945. I do not consider that the possibility of the destruction of the duplicates having occurred on May 9th would interfere with an inference that it took place during World War II.

From the materials on file it is clear that no evidence is available to establish the number, identity, and value of the reserved items which were destroyed by the Prague fire. As individual duplicates their value could not compare with that of the items comprising the main group, which were mostly originals and whose worth depended so largely on their unity as a complete collection. The most that could be warranted by the available evidence is a token award. Placing myself in the position of a jury, I would assess the value of the reserved items which were lost by reason of operations of war at \$3,000, of which the claimant, Charles J. Sachs, would be entitled to a one-half interest under his father's Will, or \$1,500.

As to the claims of Charles J. Sachs and Mrs. Helen Sachs for loss of securities and bank deposits, Dr. Samuel attempts to show that the fate of those assets was exactly the same as in the case of *Jan Redlich*—No. 9319, and that, therefore, awards should be made on a corresponding basis in the present case.

In the *Jan Redlich* case I expressed agreement with the opinion of the Deputy Commissioner in that case that the mere maintenance of so-called sub-accounts was not in itself sufficient to deprive a transfer to the Reichsprotektor of the character of a confiscation or looting. There were, however, in that case additional items of evidence, which, coupled with the maintenance of sub-accounts, indicated a continued recognition of ownership by Mr. Redlich. I refer to the successive deposits in 1944 in the name of Enterprise Friess-Redlich; to the evidence that substantial balances were shown to have remained in the sub-accounts as late as 20th April 1945, the greater part of which was withdrawn by the Nazis in the last three weeks of the war; and to the evidence that after the termination of hostilities, a balance was found in a sub-account, which was paid to Redlich without the intervention of any restoration legislation or court proceedings.

In the case of *Felix Redlich*—No. 9318, there was similar convincing evidence that substantial amounts remained on deposit in the claimant's sub-account as late as 20th April 1945. In the case of *Estate of Hugo Roth*—No. 9328, there was evidence to support the Deputy Commissioner's inference that the proceeds of the insurance policies were kept in a sub-depot account or accounts in the name of Dr. Roth until late in 1944.

The evidence in the present case is much vaguer and less satisfactory than in any of the three cases to which I have just referred. The claimant, Charles Sachs, repeatedly refers to the moneys and securities as having been confiscated without a trace. There appears to be no evidence either that a balance was returned to Leopold Sachs Estate after the termination of the war, or that any specific amount remained in his sub-accounts at any date after the present claimants had acquired Canadian national status. In particular, a comprehensive report of the Czech Ministry of Finance, dated 20th April 1949, which deals with the disposition of securities reported by Karel (Charles J.) Sachs, refers to numerous transactions which took place from 1940 to January 1944, but fails to disclose any transactions or balances persisting after the dates in October when the claimants respectively acquired Canadian national status.

On a careful survey of all the evidence, I can find no reason to disturb the findings of the learned Deputy Commissioner to the effect that the loss of bonds, stocks, bank balances, and other securities took place prior to the naturalization of the claimants in Canada.

As to costs, I am of the opinion that an award of \$60.00 would reasonably compensate the claimant, Charles J. Sachs, for expenses necessarily incurred abroad in the preparation of that portion of the claim on which he had succeeded.

With the two variations above noted, I approve the report of the Deputy Commissioner.

I accordingly recommend that there be paid to the claimant, Charles J. Sachs, the following amounts:

- (a) \$1,500 as an award for loss of property in Prague, such payment to be in Order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum;
- (b) \$60.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish a portion of his claim.

I recommend that the claims of Charles J. Sachs and Helen Sachs for loss of moneys and securities be disallowed.

Dated this 23rd day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9396

Re: Walker

This claim was referred to Deputy Commissioner Bird for the purpose of determining whether, or not, the claimant was a Canadian within the meaning of the War Claims Rules at the time of his alleged losses.

Deputy Commissioner Bird has submitted to me his report on this question, and his finding to the effect that the claimant, being a British subject, acquired a domicile of choice in Canada in 1927 and did not subsequently abandon it.

I notified the claimant, under the provisions of Rule of Procedure No. 20 that I expected to find it necessary to reverse the opinion of the learned Deputy Commissioner and to report that the claimant did not have a domicile in Canada at the time of his losses.

According to information furnished by the Department of Citizenship and Immigration, the claimant was granted the status of a landed immigrant in

Canada on 17th April 1927. After residing in Canada for approximately eight months, the claimant, with his wife and children, departed for Shanghai, and resided in the Far East until 1948. They obviously did not remain long enough in Canada in 1927 to acquire "Canadian domicile" in the statutory sense.

Assuming that the claimant intended to reside in Canada when he was landed here in 1927, and thereby acquired a common law domicile in Canada, it would appear by a strong inference that he would lose such domicile by residing in the Far East for the next twenty-one years without any overt ties or relationships with this country, and without overtly evidenced intention of returning to Canada. For these reasons, I see no alternative but to reverse the finding of the learned Deputy Commissioner, and to decide that, at the time of his alleged losses, the claimant was not a Canadian within the meaning of the War Claims Rules.

I therefore recommend that this claim be disallowed.

Dated this 17th day of May, A.D. 1955.

Since the making of my recommendation on 17th May 1955, the claimant has retained counsel to present an argument for the reconsideration of my decision, and for the restoration of the findings of the learned Deputy Commissioner. The claimant's counsel quite properly makes three submissions:

- (a) that, if the claimant be found to have established a common law domicile of choice in Canada in 1927, he would not lose it except by the acquisition of residence in a new place with the intention of settling there permanently, or at least indefinitely;
- (b) that the western population of the international settlement of Shanghai was almost entirely composed of nationals of countries other than China;
- (c) that the findings in fact of the learned Deputy Commissioner, based on an oral hearing of the witness, should not be interfered with unless they are manifestly unreasonable.

The soundness of points (a) and (c) is unquestioned. The reversal of the Deputy Commissioner's decision is based, however, not so much on a reversal of his findings of fact as on the inference to be drawn from them. It must also be borne in mind that one of the main purposes of reviewing the decisions of Deputy Commissioners is to secure a relative uniformity in the adjudications of the War Claims Commission.

As to (b), there is no suggestion that the claimant became a Chinese national. He obviously retained his status as a British subject. In order, however, for him to be eligible under the Canadian War Claims Rules, he must have been, at the time of his loss, not only a British subject, but a British subject having a domicile in Canada. In my opinion, and in the light of numerous cases of somewhat similar nature which I have reviewed, it appears unreasonable to infer that eight months' residence in Canada (even if landed as an immigrant) would confer on the claimant a domicile in Canada, but that twenty-one years' residence in China (without any overt abandonment of his domicile of choice, but without any ties whatever with Canada) would not lead to the conclusion of an intention to reside in China permanently, or at least indefinitely.

Canadian status is sometimes entirely independent of domicile, but in other cases domicile is an essential basis of Canadian national status. A Canadian by birth may abandon his Canadian domicile without losing his Canadian status. But a British subject who acquires Canadian status through the acquisition of Canadian domicile (either in the statutory sense or at common law) must retain that domicile as a supporting basis for his Canadian national status.

If, for example, the claimant had been born in Canada, domicile would be irrelevant to his national status, and he could move to Shanghai with the intention of residing there for the rest of his life, and still remain a Canadian. But, if he had come to Canada as a landed immigrant in 1922, and had resided here for the five years required to give him Canadian domicile in the statutory sense, he would unquestionably have lost that domicile by his subsequent twenty-one years in China without retaining any effective Canadian ties. *A fortiori*, it seems evident to me that the domicile which he is found, by a rather weak presumption, to have established here during his eight months of residence in Canada, would be presumed to be abandoned by his twenty-one years' residence in China without any Canadian ties.

My conclusion as to the national status of the claimant at the time of his internment would be that he was a British subject domiciled in China. The equity of this conclusion may be indicated by pointing out that if The Canadian Citizenship Act had been in force at that time, the claimant could certainly not have been regarded as being a Canadian citizen.

On a very careful re-examination of the whole claim, I cannot see my way clear to reverse my former opinion, and I must therefore confirm my recommendation that this claim be disallowed.

Dated this 9th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9402

Re: Russell

At the time of the making of my recommendation dated 11th June, 1956, I was of the opinion that I could properly approve the recommendation of Deputy Commissioner Francis for reimbursement of \$425.00 for loss of benefits of passage money to South Africa, which was apparently paid by the General Conference of Seventh-Day Adventists.

My point of view then was that, although the Conference was not a Canadian organization, it could properly be the recipient, by way of subrogation, of a claim which the claimant might be eligible to present.

More mature study of this aspect of the claim has led me to the present conclusion that the original loss on this item was suffered in the first instance by the General Conference itself, and not by the claimant. The passage money had apparently been paid by the Conference for the advancement of its missionary objectives, and had not been charged to the claimant, and was not expected to be reimbursed by the claimant. The principle of subrogation would therefore not apply, and the General Conference, not being a Canadian organization, would be precluded by the War Claims Rules from presenting a claim in its own behalf.

For the foregoing reasons, I therefore amend my recommendation of the 11th June 1956 by disallowing the item relating to loss of benefit of passage money, and I accordingly recommend that compensation in this case be limited to the amount already paid to the claimant in pursuance of my said recommendation.

Dated this 26th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9407

Re: *Federer*

...I accordingly recommend that these claims be disallowed.

I note that the learned Deputy Commissioner reserved the question of an allowance for expenses. Compensable costs are restricted by the provisions of the War Claims Rules to reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling claimants to establish their claims.—Report of Advisory Commission on War Claims, p. 70.—This provision, in my opinion, provides for the granting of expenses to claimants only in cases where valid claims are ultimately established. As in Courts of Law costs normally follow the event, so in proceedings before this Commission reimbursement of expenses must be refused in a case in which the claimant turns out to be ineligible, or the claim invalid. I must therefore recommend that the claim for expenses be also disallowed.

Dated this 22nd day of October, A.D. 1957.

By my report dated 22nd October 1957 I approved the recommendation of Deputy Commissioner Hyndman for disallowance of these claims.

Both the learned Deputy Commissioner's recommendation and my own report were made before the formulation of principles applicable to "confiscation" cases reached as a result of the meetings of Deputy Commissioners held in February 1958.

Dr. Samuel has more recently requested that these claims might be reopened for the purpose of reconsideration in the light of the adopted principles respecting claims arising in Czechoslovakia. The claims have been further reviewed pursuant to his request, and Dr. Samuel has supplemented his very comprehensive written arguments by an oral presentation before me at Ottawa, in the course of which Mr. Bloomfield was associated with him.

The basic principle on which reconsideration is sought may be summarized by saying that Canada did not recognize the Nazi authorities in Czechoslovakia as being either the *de jure* or *de facto* government of that country, but rather as usurpers of power, whose acts were devoid of constitutional validity. In a number of cases I have therefore held that formal confiscation of property in Czechoslovakia by the Nazi usurpers did not divest the owner of his beneficial interest in the property, but that in spite of such formal confiscation he might claim for compensable loss accruing at a later date by reason of such operations of war as bombing, looting, or actual asportation, provided that the acts causing such losses occurred at a time when he was a Canadian national. This principle was applied respecting immovable property in such cases as *Whitehead*—No. 1486, respecting tangible movables in such cases as *Gruber*—9288, and respecting moneys and securities in such cases as *Jan Redlich*—No. 9319.

In the present case, Dr. Samuel contends that the tangible and intangible properties of the claimants, or at least a substantial part of them, persisted intact until they were lost or damaged by operations of war after the claimants had respectively acquired Canadian status, in spite of the fact that those assets had been formally confiscated or requisitioned by the Nazi authorities at a time when the claimants were non-Canadians.

In view of my decisions in the cases which I have noted above, the principle underlying Dr. Samuel's contention appears to me to be a sound one, and the real difficulty arises in its application to the circumstances of the present cases, in the light of the available evidence.

The claim of Oskar Federer for loss of tangible assets is estimated by Dr. Samuel at \$122,190.00 covering the loss of paintings, water colours, drawings, sculptures, furniture, oriental rugs, library, and dining room sets. It is, I think,

unquestionable that the claimant was an outstanding collector of works of art in Czechoslovakia and that he possessed a widely-known collection of very considerable value, which the learned Deputy Commissioner estimates at \$40,000.00. This admittedly may be a very conservative valuation, but the main difficulty in this branch of the claim arises from the fact that the only compensable losses are those which were caused by operations of war in the period between the claimant's naturalization in Canada on 23rd February 1945 and the termination of hostilities on 8th May of the same year. The situation is complicated by the large number of confiscations, requisitions, "borrowings", hidings, damage and deterioration due to causes other than operations of war, and the recovery by the claimant of a number of articles after the end of the war. It would be entirely impossible to make any arithmetical computation either of the identity or value of the goods which were intact up to 23rd February 1945 and which were lost or damaged by operations of war between that date and the end of World War II. In my opinion, the most that the evidence would warrant would be a token award and, placing myself in the position of a jury, I would assess the compensable loss within the relevant period at \$5,000.00. I fully realize that this amount is far from adequate to compensate the claimant for the severe losses which he sustained, but the evidence indicates that the great majority of those losses were caused by acts occurring before the claimant became a Canadian.

As to Oskar Federer's claim for loss of moneys and securities, including the proceeds of insurance policies, totalling \$86,062.88, Dr. Samuel contends that the case is on all fours with that of *Jan Redlich*—No. 9319. In that case I held that the automatic return of certain moneys to the claimant at the end of the war, coupled with evidence that substantial funds remained to the credit of his sub-account as late as 20th April 1945, pointed to an inference that a considerable portion of his losses had occurred between the last mentioned date and the end of the war. In the present case, Dr. Samuel points to the evidence indicating that some securities remained in Mr. Federer's sub-accounts after the war, and were automatically returned to him. Even, however, if we can accept the evidence on this point as establishing an automatic restoration, it is not coupled with any evidence pointing to continued existence of the lost assets at any time after 23rd February 1945. In fact, the evidence discloses so many and varied transactions, blockings, confiscations, sales, replacements, and resales of the claimant's assets that the natural inference is to the effect that the great majority, if not all, of the claimant's securities and moneys were lost to him outright before he became a Canadian.

I am therefore reluctantly of the opinion that this branch of the claims, which was impliedly rejected by the Deputy Commissioner although he did not specifically mention it, must be disallowed.

The claim of Mrs. Elizabeth Federer, wife of Oskar Federer, totalling \$16,840.00 for tangible property and \$13,749.70 for money losses, is substantially similar to that of her husband, and in my opinion merits the same determination. Mrs. Federer became a Canadian national at the time of her husband's naturalization on 23rd February 1945. I would therefore, as a jury, assess her compensable loss of tangible property within the relevant period at \$1,000.00, and I would similarly reject the claim for money losses.

The claimant Henry Edward Charles Federer claims \$30,215.00 for damage to farm and farm buildings by operations of war and \$6,266.00 for loss of money. This claimant has the advantage of having been naturalized in Canada on 20th December 1943 and of having previously acquired Canadian national status within the meaning of the War Claims Rules from the date of his enlistment in the Canadian Armed Forces on 10th August 1942.

Dr. Samuel contends that the 1937 assessed value of the claimant's property, in the vicinity of \$7,000.00, was a mere fraction of its actual value. There is, however, evidence that this property, although potentially valuable, was not in the best of condition and required substantial renovation. I am prepared to agree with Dr. Samuel's contention that, under the principles which I have above outlined respecting "confiscation" cases in Czechoslovakia, the seizure, confiscation, administration or use of the claimant's property by the Nazis did not have the legal effect of depriving him of beneficial ownership. The principal difficulty, however, is the vagueness of the evidence regarding the actual war damage. The evidence submitted on this point is second-hand, indirect, and inadequate. There appear to have been bombing operations in the vicinity in the early days of May 1945 before the end of the war, but I am unable to conclude with any certainty that those operations destroyed or damaged the claimant's property. The most that I can infer is that the Germans, by their careless and destructive use of the property throughout the war caused substantial physical damage between the time when the claimant became a Canadian and the end of hostilities. The quantum of such damage is impossible to compute with any arithmetical accuracy but, as a jury, I would estimate the compensable loss at \$6,000.00.

The evidence supporting Henry Federer's "money claim" is even less adequate than in the case of his father and mother, and this branch of the claim must therefore be rejected.

As to costs, I am of the opinion that the following amounts would reasonably reimburse the three claimants for the expenses incurred abroad by them respectively in the preparation of those branches of the claims which have succeeded: Oskar Federer—\$500.00; Elizabeth Federer—\$100.00; Henry Edward Charles Federer—\$600.00.

I therefore reverse my former recommendation of 22nd October 1957, to the extent above indicated, and I now recommend that there be paid the following amounts as awards for loss of property in Czechoslovakia, each payment to bear simple interest from 1st January 1946 at 3% per annum:

- (a) to Oskar Federer \$5,000.00, in orders of Priority Nos. 3(a) and 3(b);
- (b) to Mrs. Elizabeth Federer \$1,000.00, in order of Priority No. 3(a);
- (c) to Henry Edward Charles Federer \$6,000.00, in orders of Priority Nos. 3(a), 3(b), and 4(a).

I also recommend that there be paid the following amounts as awards for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimants to establish their claims, such payments to be without interest, but not to be taken into account for priority purposes:

- (d) to Oskar Federer \$500.00;
- (e) to Mrs. Elizabeth Federer \$100.00;
- (f) to Henry Edward Charles Federer \$600.00.

Dated this 30th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9410

Re: The Government of Newfoundland

The Government of the Province of Newfoundland seeks an award out of the War Claims Fund for damages arising out of the sinking of its ship the S.S. "Caribou" by enemy action in Cabot Strait on October 14, 1942. At the time of

her sinking the ship was owned by the Government of Newfoundland and was being operated by the Newfoundland Railway. In 1949 Newfoundland became one of the Provinces of Canada, and the Federal Government assumed responsibility for the operation of the Newfoundland Railway and the ferry services and took over their assets and liabilities which in turn were transferred to Canadian National Railways Company as its agent. As neither the Government of Canada nor its agent the Canadian National Railways Company claims any interest in this matter, the only question for decision by this Commission is the amount of the award to which the Government of Newfoundland is entitled.

The evidence discloses that *S.S. "Caribou"* was built at Schiedam in Holland in 1925 at a cost of \$497,298.17 and was placed in service on a run between Port aux Basques, Newfoundland, and North Sydney, Nova Scotia. She seems to have been adequately maintained throughout the years and had been subjected to an overhaul and refit in the dockyard at St. John's in the spring of 1942.

According to the War Claims Rules, based on the recommendation of the Advisory Commission, damages should be assessed on the basis of the reasonable market value unless the property did not have a market value, in which case the intrinsic value of the property may be used. It is stated that the term "intrinsic value" lacks precision, hence the recommendation that market value be used where at all ascertainable. However, in this case a precise market value would be difficult to arrive at due to the fact that no outside appraisal was had for the reason that the Government of Newfoundland would not be interested in market values. It was merely using the ship as a part of its public transportation system, and would have continued to operate it so long as it was capable of meeting the demands of the travelling public.

The Government of Newfoundland seeks to establish value by method of comparison of gross ton costs of construction. Two ships, the *S.S. "Baccalieu"* and the *S.S. "Burgeo"* were contracted for in March of 1939 at an aggregate cost of \$909,087.50 or \$319.87 per gross ton. On this basis the *S.S. "Caribou"*, which had a gross tonnage of 2222.5 would have a 1939 value of \$710,911.08. That figure, of course, represents the 1939 replacement cost and, I think, may be taken as fairly accurate. However, it is a notorious fact that between 1939 and 1942 building costs rose sharply. And, according to the so-called "Fairplay" index, the construction costs of ships of somewhat larger tonnage rose from £ 13, 6s, 9d on June 30, 1939 to £ 20, 16s, 0d on June 30, 1942 and remained at that figure on December 31, 1942. This rise in cost would be approximately 56% so that, at the time of her sinking, the *S.S. "Caribou"* would have a replacement cost of \$1,109,021.29 but that figure would have represented the value of a new ship while the *S.S. "Caribou"* was then 17 years old.

While it seems to be the practice of shipping companies to write off annually as much as 4% of the cost of a ship by way of depreciation, that figure is by no means representative of the actual depreciation in value, as many ships, when disposed of by their original owners, still have many years of service in world commerce. And while it is quite possible that the *S.S. "Caribou"* might have remained in service for as long as 40 years, depreciation based on a straight line rate of 2½% per annum would not take into consideration the fact that the annual cost of maintenance is much higher for older ships and this affects their market value. It would seem that this factor could be taken care of equitably by increasing the rate of depreciation to 2¾% for each of the 17 years since her construction. Thus the depreciated value of the *S.S. "Caribou"* at the time of her loss would be about \$590,553.84. But even then she would have some market value for scrap or otherwise. In all the circumstances, I would allow her value at \$615,500.00.

In addition to the value of the ship, the claimant further claims the sum of \$30,000.00 estimated by the Assistant Marine Superintendent as a moderate valuation of the ship's equipment of bedding, napery, crockeryware, etc., as well as ship's stores. In view of the comparative shortness of the voyage, the figure may be somewhat high but I would allow it. The foregoing places the total value of the ship, equipment and stores at \$645,500.00. A further question remains. Should the *S.S. "Caribou"* have been insured? If she should, then the amount of insurance which in the circumstances the claimant might reasonably have been expected to be able to obtain plus the amount of the premium which such estimated insurance would have cost must be deducted from any award hereunder. See the Report of the Advisory Commission at page 67.

On the question of the failure of the Government of Newfoundland to insure the *S.S. "Caribou"* against loss, the following arguments have been advanced:

"1. When, in 1934, the Letters Patent of 1876 and 1905 were suspended by His Majesty the late King George V and the Commission of Government was constituted, one of the first actions by Commission was to cancel policies of insurance on all property of the Government of Newfoundland.

2. This, as it is understood, was in conformity with a like policy of public action which had been current in the United Kingdom for more than a hundred years. This line of public policy was made applicable to Newfoundland on the grounds that the annual premium of insurance could only increase the deficiency between Newfoundland annual revenue as compared with expenditures, deficits which were underwritten by way of Grants in Aid from the United Kingdom Treasury. The risks of loss were not such as to warrant a reversal of this long standing United Kingdom practice insofar as Newfoundland was concerned.

3. The practice of self-insurance continues to be an accepted portion of public policy in both the United Kingdom and in Canada; indeed it is understood that this policy is not only adhered to by the Dominion Government but is also followed by some, if not all, of the Provincial Governments, including Newfoundland.

4. With the system in vogue prior to 1st April, 1949, the carriage of insurance, whether ordinary or war risk, could only have resulted in an increase in the deficit on Railway operations (deficits on operating account arose in 10 of the 15 years from 1934/5 to 1948/9), or in a reduction of the operating profits (five years in same period of 15 years) which were applied to the (always inadequate and requiring supplementation by grants from Government) Railway Capital Renewals Fund.

5. At no time from 1934 to 1949 were insurance premiums an element in the factors resulting in the structure of the Newfoundland Railway and Steamship freight tariffs, that is to say, the saving resulting from the adoption of the United Kingdom policy of self-insurance was passed on to the benefit of Railway patrons and did not redound to the benefit of the Railway or to the Government."

It would seem from the foregoing that it was the considered policy of the Governments of the United Kingdom, Newfoundland, Canada and some of the Canadian provinces that these Governments should be their own insurers. And the wisdom of such policy is in no way open to question by this Commission. Provincial Governments, by the Rules, are given the same rights to compensation as the Government of Canada, and the Government is given the right to recover for losses of a non-military nature, subject, in general, to the same

priorities as other claimants. While it is settled law that the Crown is not bound by restrictive legislation unless it consents to the restriction, it must be realized that the right of compensation out of the War Claims Fund exists only through the War Claims Rules which rules do not confer any special privileges on the Crown. I, therefore, conclude that the Government of Newfoundland, although it had adopted a policy of non-insurance, is in the same position as ordinary claimants in respect of the benefits of insurance. To hold otherwise would place the Crown in the preferred position of having its non-insured losses paid while other uninsured claimants would be denied. It would seem equitable that both classes should be held to be in the same position.

It is not easy to determine, in the circumstances, what amount of insurance the Government of Newfoundland might reasonably have been expected to have procured. I think that it should be noted that it was not in the shipping business generally and ought not to have been expected to be fully aware of the rapidly rising ship building costs of the time, so that full value coverage should not be expected. Perhaps a two-thirds coverage would not be too far out of line in either direction, and I shall calculate on that basis. Two-thirds of \$645,500.00 would be \$430,333.33, to which must be added the insurance premium on such amount.

I have not been able to find out the exact rate of marine insurance for ship and supplies at the date of sinking, but I have ascertained that the general rate, including war risk for freight from Charlottetown via S.S. "*Caribou*" was 3.12%. There is a difference between the rates on hull and on cargo but it is safe to say that a composite rate of 3% on ship and supplies would not be excessive. And at that rate the premium would have been \$12,910.00. The total deduction to be made for failure to insure would, therefore, be \$443,243.33 leaving \$202,256.67. But, in addition to the deduction in respect of insurance, the claimant admits having realized the sum of \$67,500.00 on the sale of S.S. "*Empire Conington*", an enemy ship seized as a prize by the United Kingdom authorities and by it turned over to the Newfoundland Government to replace S.S. "*Caribou*" but found to be unsuited for the work and was subsequently sold. The final compensable figure for the ship and supplies is \$134,756.67.

It appears from the evidence that S.S. "*Empire Conington*" was acquired by the Government of Newfoundland on the twenty-fifth day of November 1946, and was sold in 1949 when the above figure of \$67,500.00 was received. Therefore, the claimant should have interest on that sum from the date of the sinking of S.S. "*Caribou*" until the 25th of November 1946.

I, therefore, recommend that, in respect of the loss of the S.S. "*Caribou*" and her stores, etc., the claimant be paid the sum of \$134,756.67 together with simple interest thereon at three per cent per annum from the 14th day of October A.D. 1942 as well as interest at the same rate on \$67,500.00 from the said date to the 25th day of November A.D. 1946.

The claimant also seeks a further award of \$20,707.23 as "expenses incidental to the loss of the S.S. '*Caribou*'" and made up of such items as the supplying of coffins and burial of the dead, search for bodies, clothing and travelling expenses of survivors paid to the Government of the United Kingdom. These items are claimed to be from the records of the Newfoundland Railway and would seem to come within the categories of compensable damages. I would allow the amount and recommend payment of the sum of \$20,707.23 together with simple interest thereon at three per cent per annum from the 1st day of January A.D. 1943 being the estimated *mesne* date of payments by the claimant.

And, finally, the Government of Newfoundland seeks to be re-imbursed in the sum of \$1,000.00 in respect of a payment made in November 1954 "to the widow of the late Keeper of the Beaumont Hamel Cemetery to compensate her

for the total loss of furniture, motor car and personal effects suffered by her and her late husband consequent on the over-running of France in 1940 by the German Armies." This claim seems to come within the provisions of *category* 33 of claims as set out in the Report of the Advisory Commission and should be allowed. I, therefore, recommend a payment of the further sum of \$1,000.00 together with simple interest thereon at three per cent per annum from the 15th day of November 1954 as compensation for the payment of the said amount to the above named party.

Dated this 16th day of April A.D. 1957.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commission

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

I have furnished the claimant with a copy of the Deputy Commissioner's report and, pursuant to Rules of Procedure No. 20, I have also notified the claimant to the following effect:

"My present opinion is that I shall be obliged to reduce the amount of the award recommended by the learned Deputy Commissioner in the following respects:

(a) The Deputy Commissioner deducted presumed insurance to the extent of two-thirds of the computed market value of the ship. In such cases, the Commission has adopted a general rule of presuming that at least 75% of the market value of the ship was available by way of War Risk Insurance, and that therefore the owner must (according to the provisions of the War Claims Rules) be deemed to have received such a percentage from the proceeds of the insurance. I therefore feel constrained to increase the Deputy Commissioner's insurance deduction from 66⅔% to 75%. The deduction for War Risk Insurance premium would be increased accordingly.

(b) The item of \$20,707.25 for expenses incidental to the loss of the S.S. "*Caribou*" does not appear to me to have been sufficiently established. Some of the items are supported by incomplete evidence, and others do not appear to fall into categories which are compensable under the provisions of the War Claims Rules. At present, I am of the opinion that this amount should be reduced to approximately \$10,000.00.

(c) The item of \$1,000.00 in respect of compensation paid to an individual for loss of personal effects does not appear to be established. A claim of that nature would be only as good as the claim of the individual who suffered the loss in the first instance, if the circumstances indicated that the Government had been subrogated to his right. In the absence of more adequate proof, I feel obliged to recommend the disallowance of this portion of the claim."

The claimant has indicated acceptance of the award recommended by the learned Deputy Commissioner, with the variations proposed by me in the foregoing notice.

With the suggested variations, I therefore approve the report of the Deputy Commissioner. The revised insurance deductions will amount to \$498,648.75, leaving a net compensable loss occasioned by the sinking of the S.S. "*Caribou*" and her stores, *et cetera*, (before deduction of the proceeds of the S.S. "*Empire Conington*" at \$146,851.25 (instead of \$202,256.67, as recommended by the learned Deputy Commissioner).

I accordingly recommend that the claimant be paid:

(a) \$146,851.25 as an award for the property loss of the S.S. "Caribou", and her stores and equipment, such payment to bear simple interest from 14th October 1942 at 3% per annum; subject to deduction of \$67,500.00 being the proceeds of the sale of the S.S. "Empire Conington", with interest adjustment from 25th November 1946;

(b) \$10,000.00 as an award for incidental expenses directly occasioned by the sinking of the S.S. "Caribou", and constituting an addition to the property loss thereby suffered, such payment to bear simple interest from an estimated *mesne* date of 1st January 1943.

The foregoing payments should be consolidated in a single priority rating, comprising orders of Priority Nos. 3(a) to 7 inclusive.

For the reasons mentioned in paragraph (c) of my notice under Rule of Procedure No. 20 (cited above), I recommend that the claim for "compensation paid to an individual for loss of personal effects" be disallowed.

Dated this 24th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9425

Re: Gilbert

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review, though protesting that the amount recommended is too small to provide adequate compensation for the goods lost.

Owing to the unfortunate death of the claimants' daughter, it is naturally difficult for them to provide specific and detailed evidence as to the nature and value of the goods lost. It is, however, even more difficult for the Commission to assess the value of the goods in the absence of more complete and specific evidence. On a careful review of the claim, I have reached the opinion that the amount recommended by the learned Deputy Commissioner is as large as can properly be recommended in view of the scanty nature of the evidence furnished.

In view of the smallness of the award, the length of time elapsed, and the unlikelihood of any outstanding claims affecting the estate of the deceased daughter, I agree with the apparent conclusion of the Deputy Commissioner that formal administration may properly be dispensed with and the award paid directly to the claimants.

Dated this 23rd day of May, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9429

Re: King

Since the making of my report in this case on 23rd January ultimo, the claimant has submitted further materials in support of the contention that his award should be increased. Delay in this submission is explained by the unfortunate illness of the claimant.

The claimant's present contention is based principally on the disallowance by the Deputy Commissioner of a claim for \$300.00 cash in the possession of his deceased son Henry C. King. The claimant explains that his son had been employed under war time wages for nearly five years, and had a considerable portion of his savings with him in cash at the time of the sinking of the "*Rose Castle*".

Apart from the practice of the Commission to require substantial corroborative evidence of the possession of substantial sums of money, there is the additional requirement that amounts of currency over and above what is required for the purpose of the immediate journey should be protected by some form of insurance, such as traveller's cheques or letter of credit. For that reason, even if it is established that the claimant had on his person the sum of \$300.00 at the time of his loss, the practice of the Commission would not allow a recommendation of payment of such a substantial amount. The normal maximum allowed by the Commission in such cases would be in the vicinity of \$100.00. I think, however, that in view of all the circumstances of the present case, such an amount might properly be added to the recommendation...

Dated this 16th day of February, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9430

Re: Martin

These claimants, who reside at 110 Springdale Street, St. John's, Newfoundland, seek an award of compensation out of the War Claims Fund for alleged loss resulting from the sinking of S.S. "*Caribou*" by enemy action in Cabot Strait on October 14, 1942, (1) through the death by drowning of their son Edgar R. Martin, and (2) for loss of their son's personal belongings.

I find from the evidence that the claimants were Canadian citizens at the time of the presentation of the claim, and at the time of the loss or damage complained of, they and their said son possessed a Canadian national status within the meaning of the War Claims Rules.

The evidence establishes that the claimants' son Edgar R. Martin was born on January 26, 1923 and had just completed a course in Chemistry at McGill University for which he had been awarded a B.Sc. Degree and was returning home by the S.S. "*Caribou*" when it was sunk by enemy action on October 14, 1942 and he was one of a large number of civilian casualties.

The claimants were not of great wordly means and in order to permit their son to take advantage of a scholarship and procure his special education they, and the mother in particular, were obliged to make great sacrifices. The course, a normal one of three years, was accelerated into two and they estimate from memory and from comparisons with the expenses of student companions that their cash outlay amounted to \$1600.00.

The boy had not had any opportunity to earn money after completing his course but the evidence discloses that he did have at least two offers of

employment at a commencing salary of \$165.00 and \$200.00 a month respectively. And there is no doubt that in the field of his special training wide opportunities for advancement were available to him had he survived. There was some evidence that he had decided to enter the Navy and was on way to visit home on a pre-training visit. This action would serve to lessen the amount of immediate compensation to his parents but would not destroy its possibility if otherwise established.

There was no binding contract for reimbursement between the son and his parents, and what the son had in mind will never be known, but the father, apparently a very truthful man, stated that they fully expected that compensation for their sacrifice would have been made. It therefore becomes a question of whether or not the claimants have brought themselves within the requirements of the War Claims Rules.

These rules, following the Report of the Advisory Commissioner, provide, subject to certain enlargements as to those who may benefit, that claims for loss resulting from death shall be dealt with in accordance with the principles established under *The Fatal Accidents Acts* which in the Canadian Provinces are modelled after *Lord Campbell's Act*.

In *Biggar v. Green*, 22 M.P.R., 209, Campbell, C. J., said at p. 213:

"The basis of a claim recoverable under *Lord Campbell's Act* and legislation modeled upon it is referred to by Lord Atkinson in the *Taff Vale Railway Company* case (1913 A.C. 1) as a reasonable expectation of pecuniary benefit which includes prospective loss and which is not qualified by the proposition that the deceased must have been earning or making financial contributions."

The case referred to by the learned Chief Justice, although not wholly similar, is closely akin to this present claim. Part of its headnote reads as follows:

"Where, therefore, an action was brought by a father under *The Fatal Accidents Act, 1846*, for damages for the loss of a daughter, aged sixteen, who was killed by the negligence of the defendants, and it was proved that at the date of her death the deceased, who lived with her parents, was nearing the completion of her apprenticeship as a dressmaker and was likely in the near future to earn a remuneration which might quickly become substantial:—

"Held that there was evidence of damage upon which the jury could reasonably act."

In the case of *Franklin v. The South Eastern Railway Company*, 157 E.R. 448, Pollock, C.B., said at p. 449:

"If then the damages are not to be calculated on either of these principles, nothing remains except they should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of the life. Whether the plaintiff had any such reasonable expectation of benefit from the continuance of his son's life, and if so, to what extent, were questions left in this case to the jury. The proper question then was left, if there was any evidence in support of the affirmative of it. We think there was."

He then sets out the facts and continues:

"We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough, and such reasonable expectation might well exist, though from the father not being in need,

the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of the life."

From the foregoing principles of the law it is apparent that the decision in this case must rest on the reasonableness of the claimants' expectation of future re-imbursement by their son had his life been spared. The existence of a legal or moral obligation is not a necessary basis and there can be no certainty. It would appear that juries and those exercising their functions in judicial proceedings must base their findings on what, in the circumstances of the particular cases, is reasonably probable.

In this case, the deceased son seemed to have been a bright and ambitious boy. And there is nothing to indicate that his parents' confidence in him was not justified. I, therefore, find that by the death of their son the claimants suffered a compensable pecuniary loss.

As the claimants kept no records, the claim for \$1600.00 is but an estimate. And then, too, there are the other factors which make for uncertainty as to whether the son might have been prevented from any cause from re-paying the total sum. In my opinion, a reasonable assessment of loss under *The Fatal Accidents Act* would be \$1000.00.

At the hearing the claimant father gave evidence as to the loss of his son's personal clothing and effects which he itemized and valued at at least \$320.00 cash. The items were most reasonable in quantity for a University student but, since the values were given at approximate cost, some reasonable depreciation must be deducted. I would allow the personal property loss at \$225.00.

The deceased left no will and no administration of his estate was ever taken out. And the claimants have received no compensation from any source.

My recommendation is that there be paid to the claimants jointly the sum of \$1000.00 together with interest at three per cent per annum from the 14th day of October 1942 for their pecuniary loss suffered from the death of their son Edgar R. Martin by drowning on the said date through the sinking through enemy action of S.S. "*Caribou*". And I further recommend that there be paid to the claimant, James M. Martin, as next of kin of the said Edgar R. Martin, the sum of \$225.00 together with simple interest thereon at three per cent per annum from the 14th day of October 1942, for loss of personal property of the said Edgar R. Martin through the sinking of S.S. "*Caribou*" as aforesaid.

Dated this 5th day of October A.D. 1955.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation. In coming to this conclusion as to the death claim, I wish to point out that the recommended award should bear no direct relation to a supposed obligation on the part of the son to repay to his parents the money advanced by them for his education. I doubt if any such obligation could be said to have existed, as the education of the son was a

necessary which the parents were bound to provide within the limits of their financial competence. Even if the son had been under an obligation to repay, that would have been in the nature of a debt, and the War Claims Rules specifically provide that claims by creditors for losses alleged to be due to the loss of debtors' properties or the death, disappearance or bankruptcy of debtors as a result of the war must be disallowed. (See Report of Advisory Commissioner, pp. 65 and 66). "Even where the cause can be shown to be an act of war and the loss of the amount owing is claimed as damages flowing from that act, such damages would ordinarily be too remote. The debt might not have been paid for other reasons". The learned Advisory Commissioner cites the decision of Commissioner Friel in Case No. 796, *re Hugh M. Nelson*, after World War I,—*Reparations*, Vol. II, pp. 172 and 173—to the effect that a creditor's claim for the amount of a debt due from a passenger who lost his life on the S.S. "*Lusitania*" was not admissible, the claimant's damages being indirect and consequential.

I mention the foregoing point to indicate that the loss of the probability of repayment of a debt, even when such loss is directly caused by an act of war, is not compensable under the War Claims Rules.

Indirectly, however, and irrespectively of the amount expended by the parents on the education of their son, the learned Deputy Commissioner has found that there was in this case a reasonable expectation that the son would establish himself in a profession at an early date, and would make contributions to the family budget, which was apparently not in too flourishing circumstances. In approving the findings of the learned Deputy Commissioner, I wish to make it clear that the expected contributions should not be regarded as repayments of the whole, or a part, of the sums advanced for educational purposes.

As to the award for loss of property, the record does not make it clear whether, or not, the deceased Edgar R. Martin made a will. From the findings of the Deputy Commissioner, however, I assume that he died intestate and that no formal administration of his estate was effected. Owing to the lapse of time and the improbability of outstanding debts, I think the Deputy Commissioner's recommendation for payment of this small award directly to the father is appropriate.

I therefore recommend that the claimants be paid the following amounts:

- (a) to the claimants jointly \$1,000.00 as an award in compensation of pecuniary loss suffered by the death of their son, the late Edgar R. Martin, at the sinking of the S.S. "*Caribou*", such payment to be in order of Priority No. (1-2), and to bear simple interest from 14th October 1942 at 3% per annum;
- (b) to the claimant, James M. Martin, \$225.00 as an award for loss of property at the sinking of the S.S. "*Caribou*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 14th October 1942 at 3% per annum.

Dated this 15th day of December, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9431

Re: *Moores*

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that his award should be increased.

As to the claim for hospitalization and medical care of the claimant's wife, and the expenses alleged to have been incurred for payment of hired help and nurses during his wife's illness, the claimant proffers an explanation of his failure to procure the evidence of Dr. E. F. Moores, who treated claimant's wife at the time. The record of the proceedings at St. John's by the Deputy Commissioner and his staff do not correspond with the arguments submitted by the claimant in this respect, but in the circumstances I am prepared to read the affidavit of Dr. Moores now tendered by the claimant. Even if full effect is given to that affidavit, and to Dr. Moores' opinion that the claimant's wife suffered a nervous breakdown as a result of the sinking of the "*Caribou*", on which her husband was a passenger, I feel that the circumstances of the case compel the inference that the claimant's wife's illness was an indirect, rather than a direct, consequence of the act which caused the sinking of the ship. There must be hundreds, if not thousands, of cases in which Canadians have suffered physical and mental illness, and thereby incurred substantial expenses, by reason of shock caused by events of the war involving members of their families. In no case, however, has the Commission recommended compensation for a loss of that nature.

The War Claims Rules require that personal injuries to be compensable must be a direct result of war operations. Even assuming that the claimant's wife suffered an indirect personal injury through shock, I am of the opinion that the resulting damages would be too remote to bring the injury within the rules governing compensation from the War Claims Fund.

As to the personal property claim, the claimant takes exception to the Deputy Commissioner's comments on the amount of cash in possession of the claimant and on the lack of corroboration of watches purchased for the claimant's boys. The claimant's Counsel submits that the \$400.00 cash possessed by the claimant was the proceeds of the estate of his nephew in Montreal and that he was bringing this sum home to the father of his deceased nephew. The policy of the Commission has been to recommend awards for loss of currency in the possession of a passenger only up to an amount reasonably necessary to enable the claimant to complete his current journey. The War Claims Rules require that, where property is reasonably insurable, it must be deemed to have been insured. If a claimant failed to insure property which reasonably should have been insured, the amount which he should reasonably have received as proceeds of the insurance must be deducted from any award which is recommended. Cash lends itself particularly to various forms of insurance, and the Commission has uniformly adopted the principle that if a passenger wished to carry an amount of cash in excess of that reasonably required for his journey, he should have protected it by some such form of insurance as travellers cheques or a remittance through his bank. The present submission of Counsel that the \$400.00 constituted funds belonging to an estate, rather than being the personal funds of the claimant, merely serves to accentuate the improvidence of the claimant in carrying such an amount of money on his person.

In cases of trans-Atlantic passengers, the Commission has limited recommendations for loss of currency to \$150.00. In view of the fact that this

claimant had practically completed his journey from Montreal, I consider that \$100.00 would be a reasonable maximum for his journey. If we subtract this amount from the award recommended by the Deputy Commissioner, the result is that the balance of the claim for loss of property is allowed in full, in spite of the lack of corroboration regarding the boys' watches. My opinion is that the learned Deputy Commissioner's award erred, if at all, in the direction of generosity.

I therefore approve the report of the Deputy Commissioner without variation, and I recommend that the claimant be paid \$600.00 as an award for loss of personal property at the sinking of the S.S. "Caribou", such payment to be in order of Priority No. 3(a) and to bear simple interest from 14th October 1942 at 3% per annum.

For the reasons mentioned by the learned Deputy Commissioner, and those stated above, I recommend that the claim for personal injury to the claimant's wife be disallowed.

Dated this 21st day of February, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9438

Re: Chapman

...I recommend, therefore, that an award of compensation in the sum of \$100 be granted to the claimant, Mrs. Mary Marjorie Elizabeth Chapman, and that awards of compensation in the sum of \$50 be granted to each of the daughters of the deceased, Rosemary Florence and Lucille Edna Chapman. In view of the tender ages of the two children I recommend that their awards be paid for their benefit to their mother and natural guardian, the present claimant.

June 27, 1955.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

...I therefore recommend that the claimant be paid \$200.00 as an award for maltreatment of her husband, the late F/O Gregory Armen Chapman, whilst a prisoner of war in Europe, such payment to be in order of Priority No. 1-2, and to be held upon the following trusts:

- | | |
|--|----------|
| (a) for the claimant in her own right: | \$100.00 |
| (b) for Rosemary Florence Chapman: | 50.00 |
| (c) for Lucille Edna Chapman: | 50.00 |

Dated this 12th day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9465

Re: Labelle

This claim is one of a group of 36 claims presented by 36 members of a religious order, *La Fraternité Sacerdotale*, for maltreatment and personal injuries following the internment they suffered at the hands of the Germans in France, beginning in June and July 1940 and continuing to the date of their liberation around mid-August 1944.

The facts and the evidence are the same in the 36 cases and consequently the conclusions drawn from them will apply to each and every one of the other claims.

The claimant, having established his status as a Canadian, claims compensation of \$2,500 for maltreatment and personal injuries resulting from the afore-mentioned internment.

(a) *Maltreatment*—

On July 28, 1940 the claimant was arrested by the Germans and taken to the Fresne prison where he stayed from July 28, 1940 to September 28 of the same year. He was then interned in the Grande Caserne St. Denis (St. Denis main barracks) then at Drancy and again at the Grande Caserne St. Denis where he stayed until August 25, 1944 when he claims he was liberated. It seems to be true that the conditions of internment to which the claimant was subjected constitute maltreatment as understood in the Rules. This is not, however, a case where the automatic award of \$1.00 *per diem* is applicable, but one where it is proper to award the claimant a lump sum as a "*solatium*" only. In keeping with what was awarded in several other similar cases, it is proper to set this amount at \$300.

(b) *Injuries*—

The claimant states that as a result of lack of food, bad housing conditions and continual fear, he suffered gastric troubles which necessitated long and frequent periods of rest. It should be noted, however, that the claimant remained in France for a certain time after the liberation and that he continued to perform certain duties, although at a slower pace, owing to the fact that the chaotic post-war situation in France did not permit him to accomplish the same work as before.

The medical evidence does not establish conclusively the existence of a close cause and effect relationship between the maltreatment alleged and the claimant's state of health since his release in August 1944. The undersigned recognizes that the psychological disturbances created by internment—and internment is a measure recognized as lawful in time of war—may have and no doubt did have, repercussions on the claimant's state of health. It is with regret, however, that the undersigned is forced to recognize that according to the evidence offered those repercussions did not result from personal injury as understood in the Rules.

The claim for personal injury cannot therefore be allowed.

From the foregoing, the undersigned recommends that the claimant be paid the sum of \$300 as a "*solatium*" for maltreatment and that the claim for personal injury be dismissed.

Ottawa, August 8, 1956.

(Sgd) FERNAND CHOQUETTE
Deputy War Claims Commissioner

N.B.—From a note in the file, it appears that the claimant owes the Canadian Government the sum of \$304.25 which was advanced to him for subsistence expenses during his term of internment.

NOTE: Recommendation approved by Chief Commissioner November 21, 1956.

CASE No. 9484

Re: Lush

This claimant who now resides at 11 Angel Place, St. John's, Newfoundland, has filed a claim for the loss of personal effects, clothing and nautical instruments through the sinking of *S.S. "Terra Nova"* on September 12th, 1943.

From the evidence of this claimant who was the master of *S.S. "Terra Nova"*, it appears that the ship was not sunk by enemy action, but sank from action of heavy ice and stress of weather. When he filed his notice of claim he did not know what losses were being compensated for and since his ship was engaged in carrying war materials when it sank he decided to submit his claim for loss. His evidence showed no improper motive in doing so.

The War Claims Rules provide for compensation only in case of loss from acts of actual warfare by belligerent armed forces and not from stress of weather or other natural causes. Therefore, I must recommend that the claim be rejected.

Dated this 28th day of September A.D. 1955.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

NOTE: *Disallowance confirmed by Chief Commissioner 19 January 1956.*

CASE No. 9488

Re: Carlyle

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I note the opinion of the learned Deputy Commissioner to the effect that Mr. Carlyle was a natural born Canadian, and that the Canadian citizenship of the beneficiaries of the recommended award has been sufficiently established. An examination of the will of the late Mr. Carlyle reveals the situation that his residuary legacies include a number of life interests, contingent remainders, and bequests to a number of then unborn persons. An investigation of the eligibility of all possible beneficiaries under Mr. Carlyle's will would in all probability prolong the proceedings beyond the life of this Commission. I am of opinion that the shares which might, in certain contingencies, go to certain beneficiaries who have not been shown to be Canadian citizens would be too small to warrant the holding up of an award. I therefore concur in the recommendation of the Deputy Commissioner that the award should be paid to the claimant executor, for administration in accordance with the terms of Mr. Carlyle's will.

I therefore recommend that the claimant, The Canada Permanent Trust Company, as Executor of the will of Thomas William Carlyle, be paid \$948.00 as an award for loss of property by Mr. Carlyle at the sinking of the *S.S. "Lady Drake"*, such payment to be in order of Priority No. 3(a), and to bear simple interest from 4th May 1942, at 3% per annum.

Dated this 17th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9492

Re: Mutter

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

The learned Deputy Commissioner recommends that the advances already received by the claimant from the Government of Canada in respect of capital compensation on account of his losses be deducted from the recommended award. He does not, however, compute the amounts so to be deducted. From information supplied by the Department of Finance, the capital payments made to the claimant were \$1416 for loss of automobile and other personal effects, and \$419 for replacement and loss of use of clothing, or a total of \$1835. Of the above amounts \$725 was for the automobile. As the claim for the automobile was disallowed by the Deputy Commissioner, the compensation paid him by the Government on that item should not be deducted. The subtraction of \$725 leaves \$1110 capital compensation to be deducted from the recommended award. Of the last mentioned amount, \$419 was paid to the claimant about 10th April 1943, and the balance about 1st May 1947. On the basis of the formula adopted by the Commission, the recommended award is also subject to deduction, with respect to the interest item only, of \$459.50 paid by the Government of Canada to the claimant by way of non-capital compensation, for loss of use of furniture and household effects and loss of use of automobile.

It is therefore clear that no balance of the recommended award will be payable to the claimant in either the capital or the interest column, but that the Government of Canada will be subrogated to the claimant's right to receive the whole of the award recommended in each column.

I accordingly recommend that there be paid to the Government of Canada, by subrogation to the entitlement of the claimant, the award of \$957 recommended as compensation for loss of property by the claimant in Singapore, such payment to be in order of Priority No. 3(a), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 25th day of October, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9495

Re: Woo

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further materials in support of the contention that his award should be increased.

The claimant particularly protests against the disallowance of his claims for personal injury and for transportation expenses incurred in repatriation to Canada.

The latter expenses are clearly not compensable under the War Claims Rules. Even in cases where repatriation expenses have been advanced by the Government of Canada to Canadians who are now claimants under the War Claims Rules, I understand it to be the practice that such advances are deducted from other items of award recommended by this Commission.

As to the claim for personal injury, I regret that I have no alternative but to approve the decision of the learned Deputy Commissioner and to recommend the disallowance of this portion of the claim. The evidence strongly indicates that the claimant underwent severe privations and sufferings at Hong Kong and China following the Japanese invasion. There may also be a sound basis for his contention that such privations including the lack of vitamins, severely affected his eyes and teeth, and caused him considerable pecuniary loss after his repatriation. I have not gone into this aspect of the case fully, as any finding on the last mentioned point would be entirely irrelevant to a decision on the claim. In order to be compensable under the War Claims Rules, a personal injury must have been caused either by maltreatment during internment, or by the direct consequences of an operation of war. The claimant was never interned, and although his privations may have been actually more severe than those of persons who were interned, they were the consequences of the existence of a state of war, and therefore not compensable from the Canadian War Claims Fund. It would be useless for me to attempt to argue the merits or demerits of this situation, because the Commission is bound to apply the provisions of the War Claims Rules, which definitely preclude the granting of compensation in such cases.

As to the claim of \$665.00 for damage to an apartment which the claimant claims to have owned through his father's estate, I agree with the learned Deputy Commissioner that there is not sufficient evidence to entitle the Commission to make a favourable recommendation on that portion of the claim. It would require to be shown that the father was the owner of the apartment at the time of the damage, and that the father was a Canadian at that time, that the damage was the direct result of an operation of war, and that the claimant was the legal beneficiary of his father's estate in respect to the loss complained of. If all these requirements are established, this portion of the claim could then be re-stated. Otherwise, I have no alternative but to confirm the Deputy Commissioner's recommendation for disallowance.

There remains to be considered the claim for loss of personal effects. Though I hesitate to disturb the factual estimates made by a Deputy Commissioner in such cases, I have carefully examined the inventory of goods lost. It would appear that the articles itemized were in the nature of a selective list, and that in all probability the claimant lost a number of other articles whose identity he has not been able to recollect. The values placed on the itemized articles do not appear to be excessive, though it must be remembered that the criterion of value under the War Claims Rules is not the value to the claimant but reasonable market value. On viewing this portion of the claim from all possible angles, I am of the opinion that the estimate made by the learned Deputy Commissioner might be slightly increased, and I would fix the compensable value of the personal effects lost by the claimant at \$800.00.

With the foregoing variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$800.00 as an award for loss of property at Hong Kong, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

I recommend that the claims for personal injury and for repatriation expenses be disallowed.

I also recommend that the claim for damage to the apartment owned by the claimant's father be disallowed, subject to further consideration if the evidence requested to establish this portion of the claim is presented.

Dated this 28th day of March, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 21 (IT.) (9498)

Re: *Horn*

Deputy Commissioner Francis, to whom this claim was referred, has reported to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has admitted that no further evidence is presently available as to the method of disappearance of his goods.

While I am substantially in agreement with the learned Deputy Commissioner's findings as to the inadequacy of the evidence to establish a valid claim under the Treaty of Peace with Italy, there is another factor in the case which, in my opinion, renders it more directly necessary to recommend disallowance of the claim.

In his Statement of Claim, corroborated in this respect by certificate of the Registrar of Canadian Citizenship, the claimant deposes that he was granted Canadian citizenship on 14th May 1948, and received certificate of citizenship No. 26295—series A—at Montreal on that date. The *War Claims (Italy) Settlement Regulations*, paragraphs 2 (1)(a) and 3, prescribe as a condition of eligibility that a claimant must have been a Canadian citizen on 15th September 1947, the date of the coming into force of the Treaty of Peace with Italy. The claimant was not a Canadian citizen at that date. Apart, therefore, from the inadequacy of proof of his loss and of his status as a United Nations national at the times prescribed by the Treaty of Peace, he is ineligible to receive an award under the terms of the *War Claims (Italy) Settlement Regulations*.

I therefore approve the conclusion reached by the learned Deputy Commissioner, and I recommend that this claim be disallowed.

Dated this 5th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Advisor Commissioner

CASE No. 9499

Re: *Acheson*

The claimant appeared before me at Vancouver, B.C., represented by John Farris, Q.C., on May 27, 1955, in support of his claim under the War Claims Rules for recognition as a person having Canadian national status at the time of the outbreak of War with Japan and at all subsequent relevant times. The claim of his wife, Hilda de Vere Acheson (File 1731 BIW) was considered at the same time, since Mrs. Acheson was not then able to leave her home at Ganges, Saltspring Island.

The claimant stated that he was born in England, his father being a British subject also born in England. His evidence is confirmed by Canadian Passport #90863 issued in 1940.

The claimant stated that he resided in China from 1927 until 1933; returned to England where he married his wife, Hilda de Vere Acheson, and subsequently he and his wife visited in British Columbia for some months and later returned to China, where they resided until 1939.

During the whole of the period of the residence of claimant and his wife in China, the claimant was employed as an officer of the Chinese Maritime Customs Service.

The claimant says that in 1939 he moved with his wife and family to British Columbia to make his permanent home in Canada. His evidence in this

respect is confirmed by entries in passports #90863 and #05431 dated 8th Feb. 1940 respectively in the names of the claimant and his wife from which entries it appears that each was granted the status of a landed immigrant by an official of the Canadian Immigration department.

The claimant states that he purchased a home at Ganges, Saltspring Island, soon after settling there with his wife and two children. He then caused furniture to be shipped to Ganges from England. Later additional furniture which had been left by the claimant in China was shipped to Ganges.

Certificate of Encumbrance showing registration of claimant's home at Ganges in the joint names of the claimant and his wife has been produced since the hearing and is on file.

The claimant returned to China in March 1940, leaving his wife and family in their home at Ganges. He states that he did so for a temporary purpose only, having the intention of returning as soon as possible to British Columbia. He returned to China in consequence of a request from the senior diplomatic official in Shanghai that all recently retired officials of the Customs and other British or International services should do so to avoid the possibility that Japanese officials would occupy positions so left vacant.

On his return to Shanghai the claimant filed with the appropriate British official a declaration of his intention to retain his Canadian national status in accordance with the memorandum endorsed in his passport on page 13 which reads as follows:

"I/C issued—AMA 2668120"

He was unable to file a similar declaration in the years subsequent to 1941 due to the fact that Japanese forces were then in control in China.

In October 1941 the claimant's wife joined him in China having left her children in the family home established at Ganges, B.C., where they remained throughout the period of the War. The claimant referred to paragraph 1 of his letter to Mr. Francis under date February 2, 1953, reading as follows:

"All subjects of the Crown living in China enjoyed extra-territorial rights by treaty until the last war or shortly after. That means to say that they came under the laws of their own country and not under the laws of China. Nor could a person change their nationality while under extraterritoriality. All this of course you know. Being born therefore of British subjects enjoying extraterritoriality made her automatically a British subject by birth, (and not Chinese) and registration was made of her birth as is required by (British) law."

He explains the foregoing statement by saying that under the Treaty between China and Great Britain which became effective early in the 19th century and remained in effect continuously thereafter until China fell under the control of Japanese forces, all British subjects living in China were granted extra-territorial rights, the effect of which was to continue the existing national status of all British subjects during the period of their residence in China. A British subject enjoying such rights could not change his national status whether or not he registered periodically with the appropriate British authority. Further the extra-territorial rights so extended to British subjects, included British subjects (Canadian). The claimant believes that he has some documentary material which will serve to confirm his testimony relative to such extra-territorial rights and has undertaken to forward copies of such material if he is able to find it on return to his home.

Whatever may be the situation in regard to national status—and the right of a British subject resident in China to change his national status—upon

which I do not find it necessary in present circumstances to reach a conclusion—if the claimant's submission extends to a denial of the right of that person to change his domicile, it cannot be sustained. The point was taken and rejected by the House of Lords in *Casdagli v Casdagli*, 1919 A.C. 145—wherein it was held that there is no rule of law that a British resident in Egypt, who is registered as a British subject at the British Consulate and as a consequence enjoys certain privileges and immunities by reason of the extra-territorial jurisdiction exercised by His Majesty in that country, cannot acquire an Egyptian domicile. However there is nothing on the evidence before me to suggest that either claimant ever acquired a domicile in China.

Both claimant and his wife were interned by Japanese forces soon after the outbreak of War with Japan.

They returned to Canada immediately after liberation in 1945 as appears from endorsements on their respective passports.

By letter from the Department of Citizenship and Immigration under date March 4, 1953, on file 1731, the fact of Mrs. Acheson's landing in Canada in 1939 is confirmed. However, the Department states that "she could not have had Canadian domicile in March 1943, only four years after the date of initial landing."

The statement so made must be taken to relate to domicile in Canada under the *Immigration Act*.

I consider that it has been sufficiently established that both claimant and his wife prior to 1939 had domicile of origin in England. Since it appears from the foregoing that both claimant and his wife were granted the status of landed immigrants in Canada in 1939 and immediately thereafter established a home in British Columbia and settled there with their children, it is, I think, further established that each of them abandoned the domicile of origin and acquired a domicile of choice in Canada. The foregoing conclusion is founded upon the principles examined in my report on the Aubrey Walker claim, File No. 1492, which I think need not be further examined here.

In my opinion the evidence adduced at this hearing with regard to the claimant and his wife is sufficient to support an inference that each of them entered Canada in 1939 and resided there subsequently with the intention of establishing permanent residence in Canada.

I find nothing in the material before me to support a conclusion that the domicile of choice was subsequently abandoned by either claimant. Indeed, the evidence before recited as to the establishment of a home in Ganges and the fact that the claimant's children remained there subsequently, I think, points conclusively to the retention by each of the claimants of Canadian domicile so acquired by choice. I accept the claimant's statement that his return to China in 1940 and that of his wife in 1941 was in each case for a temporary purpose only. Each of them, I am satisfied, then intended to return to Canada but were prevented from so doing by the outbreak of hostilities in China.

It further appears that both claimants were granted certificates of Canadian citizenship in 1947. These certificates were produced for inspection on the hearing. Reference is made thereto in the letter of the Department of Citizenship and Immigration of March 4, 1953, before mentioned.

I therefore recommend that both claimants should be recognized as persons having Canadian National Status at all relevant times.

(Sgd) H. I. BIRD
Deputy War Claims Commissioner

NOTE: Award recommended by Bird, D.C., 12 April 1956 and confirmed by Chief Commissioner 1 November 1956.

CASE No. 9504

Re: Hackett

Deputy Commissioner Bird, by a report dated 12th July 1955, has found that the claimant has had a common law domicile in Canada ever since her marriage in 1926. The Department of Citizenship and Immigration certified on 8th April 1953 that the claimant then had a claim to Canadian citizenship under Section 9(1)(c) of the *Citizenship Act*. This claim presumably dated back to September 1951, when the claimant had resided in Canada for five years after her admission for permanent residence.

I am therefore of the opinion that, within the meaning of the War Claims Rules, the claimant had Canadian status at the time of her internment, and was a Canadian citizen at the time of presenting her claim...

Dated this 28th day of February, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9509

Re: Mustard

... Strictly speaking, the portion of the foregoing estimate which is relative to the effects lost by the late Mr. Mustard should go to his estate and be divided among the beneficiaries of his intestacy. Since, however, the whole family have apparently worked together in the prosecution of the claim, I think the whole amount may properly be paid to the claimant, to make such distribution respecting the goods lost by her father as she may see fit...

Dated this 15th day of March, A.D. 1956.

Since making my Report dated 15th March 1956 on the above noted claim for the death of the late James Thornton Mustard I have had the opportunity of further reviewing this claim in conjunction with a number of somewhat similar claims.

I have reached the conclusion that in the present case there is evidence that the death of the deceased caused a general dislocation of arrangements in the family to which the deceased belonged. As a consequence there appears to have been a resulting pecuniary loss in addition to that for which specific compensation has been awarded pursuant to my previous Report. It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the additional amount of \$1,000.00.

I therefore recommend that there be paid the following amount as an award for pecuniary loss resulting from the death of the late James Thornton Mustard in addition to the amount recommended by my Report of 15th March 1956:

to Elizabeth J. Burch, Executrix of Estate of Pearl Elizabeth Mustard deceased \$1,000.00, such payment to be in order of Priority No. (1-2) and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 14th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9515

Re: Russell

... This claimant appears to have received unusually brutal treatment from his captors throughout practically the whole period of his detention. He was subjected to extreme malnutrition and exposure, and served an assignment of 118 days in coal mines under bad working conditions. In the course of a forced march, he was badly beaten by German guards with rifle butts and a spade. As a result, he suffered two broken teeth, broken ribs, and injured head. He contracted diphtheria, for which no hospitalization was provided, and, in spite of illness, was forced to work and march in cold weather with inadequate clothing and protection. Few cases of such severe maltreatment in Europe have come before the present Commission, and I would recommend payment of an additional \$50.00, notwithstanding the fact that the award will thereby be increased to an amount in excess of the normal maximum of \$1.00 per day...

Dated this 14th day of December, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9517

Re: Grimston

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report and, on review, have waived presentation of further materials, with the exception of certain marriage certificates requested by the learned Deputy Commissioner.

As the High Court of Justice for Ontario and the French authorities are in agreement that the entitlement to the compensation in question passes to the residuary legatees of the Will of the late Mr. Grimston, I agree with the conclusion of the learned Deputy Commissioner that such compensation should be considered as belonging to the residuary estate of the deceased.

I take it that the remarks of the Deputy Commissioner amount to a finding that all parties who would participate in the residuary estate, and consequently in the compensation which he recommends, were Canadian citizens at the relevant time of presentation of the claim. At the time of the loss, the late Mr. Grimston was obviously a British subject having a domicile in Canada, and he would therefore be a Canadian national within the meaning of the War Claims Rules. The question of eligibility of claimants has therefore been properly decided in the affirmative.

It is arguable that the amount of compensation recommended by the learned Deputy Commissioner is too high, in view of the opinion of the French Ministry of Reconstruction as to the value of the house and caretaker's lodge, and in view of the fact that some articles of the movable property were of a luxury type, in respect to which the War Claims Rules require substantial corroboration. Since, however, the learned Deputy Commissioner arrived at his estimates after very careful consideration on the basis of an oral hearing, I am not disposed to disturb his findings as to the quantum of compensable loss.

I agree with the Deputy Commissioner's suggestion that a portion of the award might now be paid, and that the balance should remain in abeyance until it is ascertained what compensation, if any, the French authorities will contribute. Subject to the executors' executing subrogation of the French claim

to the Government of Canada, I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to *War Claims Regulation* 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

With the foregoing reservations, I approve the report of the Deputy Commissioner, and I recommend that there be paid to Richard Godfrey Mills and Eileen Mitchell Thomas, executors of the Will of Charles Digby Grimston, deceased, (for distribution according to the laws of the Province of Ontario) the sum of \$27,000.00 as an award for loss of property in France, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b), and 5, and to bear simple interest from 1st January 1946 at 3 % per annum.

Dated this 1st day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9523

Re: Usher

...In addition to the extremely brutal treatment accorded to this claimant while in the custody of the Gestapo, he was subjected to especially severe conditions at Luckenwalde, where he was detained for over three months. I would recommend a further additional award of \$50.00...

Dated this 24th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9526

Re: Johnson

Deputy Commissioner Bird has submitted to me his report as to the national status of this claimant, and has recommended that the claimant be regarded as having been, at the time of his internment, a British subject having a domicile in Canada at Common Law.

Deputy Commissioner Marion has also reported that the claimant, whilst a member of the New Zealand armed forces, was in custody as a prisoner of war in Europe for 1226 days. The learned Deputy Commissioner recommended a maltreatment award accordingly.

Unfortunately, the reports of the Deputy Commissioners do not cover the question of the national status of the claimant at the time of the presentation of the claim. The Department of Citizenship and Immigration has advised that the claimant relinquished his Canadian domicile (as defined in the *Immigration Act*) when he proceeded to New Zealand in January 1939; and that he did not regain Canadian domicile in the statutory sense until he returned to Canada in April 1954, when he was required to comply as an immigrant and was granted the status of landed immigrant at Vancouver. The claimant has not been granted Canadian citizenship, and it seems obvious that he would not be eligible for Canadian citizenship during the period available for presentation of claims.

As the Canadian War Claims Rules require the claimant to be a Canadian citizen at the time of presenting his claim, this Commission has no authority to

entertain the present claim. Apart from this somewhat technical difficulty, the question of the claimant's domicile at the time of his imprisonment is, as Deputy Commissioner Bird intimates, distinctly on the border line.

In all the circumstances, I have no alternative but to reverse the recommendation of Deputy Commissioner Marion, and I recommend that this claim be disallowed.

Dated this 25th day of April A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9528

Re: Fournier

Deputy Commissioner Choquette has submitted to me his findings and recommendations, with his reasons therefor.

I have already approved the recommendation for payment of a maltreatment award.

The claimant has been furnished with a copy of the Deputy Commissioner's report on the personal injury and property claims. On review, he has made general submissions regarding the jurisdiction and proceedings of the Commission, to which I have referred in detail in CASE No. 6078—*Reverend Rosario Renaud*. He also specifically argues that the amount awarded for personal injury is obviously smaller than is warranted by the damages suffered.

In the present case, it is to be noted that the claimant was imprisoned for offences against the laws of Japan, from 29th December 1940 until 13th September 1943. Obviously, therefore, a portion of his period of detention was prior to the outbreak of World War II in the Far East, and any damages which he suffered as a result of maltreatment during that time would not be compensable under the War Claims Rules.

As to the remaining period of detention from 7th December 1941 until his liberation, some question might arise as to whether such detention constituted internment under the War Claims Rules, so as to form the basis of a maltreatment claim. I am inclined to give the claimant the benefit of the doubt on this point, and therefore to infer that he suffered actual maltreatment during the latter period of his detention. On a careful review of the personal injury claim I am of the opinion that the award recommended by the learned Deputy Commissioner is a fair and equitable estimate of the extent to which any pecuniary loss resulting from the claimant's illness was aggravated by maltreatment suffered by him during the actual period of World War II.

In this connection, another question arises as to whether the compensation for personal injury should be paid to the claimant himself or to the Religious Order of which he was a member. As in a number of other cases in which this question arises, I consider that it is proper and more convenient to recommend payment to the claimant himself, leaving it to him and his Order to decide the ultimate beneficiary of the award.

As to the property claim, the claimant contends that the award recommended is flagrantly insufficient to compensate the claimant for his loss. In this connection, the question arises as to whether the claimant's goods were lost before or after the commencement of World War II. I am of the opinion that the learned Deputy Commissioner has decided this question fairly and equitably by inferring that a portion of the goods, which he values at \$600.00 were lost to the claimant after the outbreak of World War II. I accept his finding and estimate of value in this respect.

The claimant submits, on review, that the award recommended should not be subject to deduction of the amount which might have been secured from the Japanese Government under the Treaty of Peace with Japan. I am unable to agree with this contention, because the Commission is obliged to deduct, as compensation otherwise provided for, any amounts which might with reasonable diligence have been secured from an alternative source of compensation. The Commission has, however, recognized that certain expenses, difficulties, and contingencies might militate against a claimant's securing full compensation from the Government of Japan for the loss of moveable property, especially in the nature of personal effects. For that reason I would fix the amount of compensation which is deemed to have been received from the Japanese Government at a capital sum of \$400.00, with interest adjustment from 1st January 1956...

Dated this 24th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9530

Re: Doyon

(and 23 other similar cases)

Deputy Commissioner Choquette has submitted to me his findings and recommendations on the maltreatment claims in each of the cases listed below, with his reasons therefor.

The several claimants were detained by the Japanese in a number of different places of internment or detention, and the conditions of life in those various places appear to have differed considerably.

The camps at Urawa, Fukushima, Kobe, Sapporo, and Hakodate, obviously conformed to the pattern of camps operated (that is administered or effectively controlled) by the Japanese. I therefore have no difficulty in accepting the findings of the learned Deputy Commissioner to that effect, and his recommendation that the time spent in those five camps should form the basis of an automatic *per diem* award for maltreatment.

Just as obviously, the places of detention at Aomori, Kita, Morioka, and Kyota, do not appear to have been camps operated by the Japanese, but were rather places of enforced residence under enemy supervision. Detention in such circumstances does not, according to the War Claims Rules, give rise to a presumption of maltreatment, or form the basis of an automatic maltreatment award.

The circumstances prevailing at Mototera Koji and Kita-Ni-bancho, (both at Sendai), present more difficulty, as they seem to partake partly of the characteristics of a Japanese-operated camp, and partly of the characteristics of enforced residence under enemy supervision. After very careful consideration, I have come to the conclusion that these camps should be regarded as having been operated (that is administered or effectively controlled) by the Japanese for the following, among other, reasons:

1. Japanese guards in considerable numbers were constantly present, both inside and outside the two camps at Sendai.
2. The Japanese undertook the provision of food (though that seems to have been of meager quantity and poor quality).
3. The rules of camp life were dictated solely by the Japanese, without the mediation of any representative of the internees.

4. The claimants were interned along with a number of civilians and with non-members of their own or related religious orders.
5. The allotment of space in the place of detention was dictated by the Japanese. It incidentally involved considerable overcrowding, and over-demand on the inadequate sanitation facilities.
6. The Japanese conscripted a number of the internees to do the cooking and other household chores in the camp.

I should not like to give the impression that any one of the foregoing reasons should be regarded as in itself sufficient to constitute a Japanese-operated camp. Taken together, however, they indicate a pattern of internment which leads me (though not without hesitation) to agree with the finding of the learned Deputy Commissioner that Mototera Koji and Kita-Ni-bancho camps at Sendai were "camps operated by the Japanese".

The pattern of internment at Yokohama and Futatabi-Yema seems to have been sufficiently similar to that in the camps at Sendai to warrant the drawing of a similar inference, and I am therefore inclined to accept the learned Deputy Commissioner's findings as to these camps also.

Having reviewed the Deputy Commissioner's reports so far as maltreatment awards are concerned, I approve his recommendations without variation.

I therefore recommend that each of the listed claimants be paid the amount set down after his name as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, each of such payments to be in order of Priority No. (1-2).

Other claims made by the same claimants are reserved for later consideration.

(Here follows a list of 24 cases concerned).

Dated this 20th day of June, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9533

Re: Martineau

...The claimant also submits, on review, that the award recommended should not be subject to deduction of the amount which might have been secured from the Japanese Government under the Treaty of Peace with Japan. I am unable to agree with this contention, because the Commission is obliged to deduct, as compensation otherwise provided for, any amounts which might with reasonable diligence have been secured from an alternative source of compensation. The Commission has, however, recognized that certain expenses, difficulties, and contingencies might militate against a claimant's securing full compensation from the Government of Japan for the loss of moveable property, especially in the nature of personal effects. For that reason I would fix the amount of compensation which is deemed to have been received from the Japanese Government at a capital sum of \$1,800.00, with interest adjustment from 1st January 1956...

Dated this 21st day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9537

Re: Bissonnette

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

The claimant has been paid an award for maltreatment, as recommended in my report dated 20th June 1957.

As to the claim for personal injury, I agree with the conclusion of the learned Deputy Commissioner that the evidence in this case does not support a claim which would be compensable under the War Claims Rules. Although the claimant doubtless suffered substantial privations during the course of his internment, there is no adequate proof either that his subsequent physical ailments were directly attributable to maltreatment, or that any compensable pecuniary loss resulted therefrom. I have therefore no alternative but to approve the Deputy Commissioner's report in this respect, and to recommend that the claim for personal injury be disallowed.

In regard to the claim for loss of property, the learned Deputy Commissioner makes a finding that the claimant suffered a compensable loss of \$5,950, and reserves the question of computing compensation which the claimant could or might have received from the Government of Japan under the Treaty of Peace with that country.

The property loss in this case apparently included \$4,000 for the destruction of a school and \$1,950 for loss of personal effects.

The experience of the Commission is that awards by the Government of Japan under the Treaty of Peace are on a more generous scale than those which are permitted by the War Claims Rules. The reason for this discrepancy is that the former are based on estimated cost of replacement, whereas the War Claims Rules limit the scope of compensation to reasonable market value at 30th June 1941 with deduction for depreciation from then until the time of loss. In most cases, therefore, it is found that a well-presented claim under the Treaty of Peace with Japan will result in an award from the Japanese Government more than sufficient to include the award which may be made under the War Claims Rules for the same loss, as well as accrued interest at the prescribed rate. This is particularly true with respect to claims for loss of or damage to buildings or immovable property, and I am convinced that in the present case a claim for loss of the school property submitted to the Government of Japan would have resulted in an award more than adequate to include the \$4,000 market value estimated by the Deputy Commissioner and ten years' interest on that amount up to the estimated date of the potential Japanese award, namely 1st January 1956.

I therefore conclude that the \$4,000 found to be compensable loss respecting the school, and interest thereon, are more than offset by the award which the claimant might or should have received had he presented a claim against Japan under the Treaty of Peace. This factor of the claim must therefore be disallowed.

As to loss of personal effects and movable property, there are sometimes difficulties of proof, expenses, and contingencies which militate against the securing of full compensation under the Japanese treaty. It is therefore perhaps unfair to raise in each case an irrebuttable presumption that the claimant would have received complete compensation from the Government of Japan for the loss of movable property. Considering this question from all points of view, I am disposed to estimate the compensation which this claimant might have

received from the Government of Japan for his movable property at \$1,750, and the mesne date of payment as 1st January 1956. (See CASE NO. 9536—*Reverend Arthur Alphonse Forget*).

Subject to the foregoing estimates, I approve the report of the Deputy Commissioner without variation.

I accordingly recommend that the claimant be paid \$1,950.00 as an award for loss of movable property in Japan, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,750.00 deemed to have been received from the Government of Japan, with interest adjustment from 1st January 1956.

Dated this 22nd day of January, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9540

Re: Dominicaines

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has omitted presentation of further materials with the exception of general objections to the jurisdiction and proceedings of the Commission, to which I have referred in detail in my report on CASE NO. 6078—*Reverend Rosario Renaud*.

As to the claim for maltreatment, an award under this heading is regarded by the War Claims Rules as being in the nature of a *solatium* and as being of a highly personal nature with reference to the person maltreated. If the latter dies before receiving an award, his award survives for the benefit of his personal dependents, but not for the benefit of his estate or of any person or corporation outside the restricted list of dependents enumerated in the report of the Right Honourable Advisory Commissioner. For these reasons, it is not possible to recommend the granting of a maltreatment award to the religious Order of which the late Father was a member, even though it may be successfully contended that the Order stood in *loco parentis* to the member concerned. I have therefore no alternative, under the provisions of the War Claims Rules, but to approve the recommendation of the Deputy Commissioner. (See CASE NO. 6766 concerning the death of *Sister Marie Catherine Agnes*).

As to the claim for personal injury, I agree with the conclusion of the learned Deputy Commissioner that the evidence does not establish a causal relationship between maltreatment and the alleged incapacity of the late Father Cloutier between the time of his liberation and death.

As to the claim for property loss, I consider that the Deputy Commissioner's award of \$350 is a fair and equitable estimate of the market value of the goods lost by the late Father Cloutier during his internment, presumably by looting. For the reasons mentioned in my report on CASE NO. 9547—*Reverend Trahan*, I agree with the opinion of the learned Deputy Commissioner that the Commission must deduct from this award the amount which could have been received by prosecuting the claim under the Treaty of Peace with Japan. I would fix the amount of compensation which is deemed to have been received from the Japanese Government at a capital sum of \$150, with interest adjustment from 1st January 1956.

Having reviewed the Deputy Commissioner's report, I approve it without variation, subject to the foregoing estimate as to the quantum of "satisfaction otherwise provided for".

I accordingly recommend that the claimant be paid \$350 as an award for loss of property in Japan in possession of the late Father Cloutier, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$150 deemed to have been received under the Treaty of Peace with Japan with interest adjustment from 1st January 1956.

I recommend that the claims for maltreatment and personal injury be disallowed.

Dated this 25th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Note: See CASE NO. 9309, Re: *Arcand* and CASE NO. 9343, Re: *Sainte-Croix*.

CASE No. 9541

Re: *Lebel*

...There is also an item of \$456.80 comprising the expenses of a trip made to San Francisco by Father Leduc in order to meet the claimant on his return from Japan in 1945. Father Leduc's trip was apparently necessitated by information that the claimant was physically and mentally unable to make the train trip from San Francisco to Montreal without an escort. Unfortunately, this item of expenditure would appear to be incidental to the repatriation of the claimant, and therefore be specifically excluded from compensation under the War Claims Rules.

The supplementary evidence taken on review clarifies to a considerable extent the deterioration of the claimant's physical and mental health, and of the pecuniary loss suffered by himself and his Order through the ailments resulting from internment. There remains, however, to be determined the proportion of such injury which was the direct result of actual maltreatment (in the form of malnutrition and threats by the Japanese) and the proportion which resulted from the stress and tension of conditions prevailing in war time and in the course of internment, especially in the case of a naturally sensitive personality such as the claimant's. Obviously, the inevitable results of wartime tensions, and of stress created by internment as such, are not compensable under the War Claims Rules. The Rules permit only compensation for the portion of pecuniary loss which can be directly attributed to actual maltreatment. This proportion is extremely difficult to fix with mathematical accuracy, but in the light of all the circumstances I am inclined to estimate the degree in which maltreatment aggravated the claimant's state of health and consequent pecuniary loss in the sum of \$2,200.00...

Dated this 5th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9546

Re: Picher

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review.

The claimant has been paid an award for maltreatment as recommended in my report dated 20th June 1957.

As to the claim for personal injury, I agree with the conclusion of the learned Deputy Commissioner that the evidence in this case does not support a claim which would be compensable under the War Claims Rules. Although the claimant doubtless suffered substantial privations during the course of his internment, there is no adequate proof either that his subsequent physical ailments were directly attributable to maltreatment, or that any compensable pecuniary loss resulted therefrom. I have therefore no alternative but to approve the Deputy Commissioner's report in this respect, and to recommend that the claim for personal injury be disallowed.

In a number of similar cases of very small claims for loss of personal property, the Commission has adopted the view that difficulties of proof, expenses, and other contingencies might militate against the securing of full compensation from the Government of Japan under the Treaty of Peace with that country, and that therefore very small claims should be excused from the penalty normally attaching to default in prosecuting a claim under the Japanese Treaty. I think that exception should be made applicable in the present case.

With the foregoing variation, I approve the report of the Deputy Commissioner, and I accordingly recommend that the claimant be paid \$150.00 as an award for loss of property in Japan, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 19th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: See CASE NO. 9547 *Re: Trahan*.

CASE No. 9556

Re: Walters

This application was heard in Channel, Newfoundland, on the 19th of July, 1955, in the presence of the claimant and Mr. R. J. Batt of counsel for the Commission.

The applicant was born at Isle-aux-Morts, Newfoundland, on the 22nd of March, 1904, and was a Canadian at all relevant times. He was a passenger on the S.S. Caribou sunk through enemy action on the 14th of October, 1942, and now claims \$294.00 for the loss of his personal effects. I assess his loss at \$250.00 and recommend for the applicant a property loss award of \$250.00 together with simple interest thereon at the rate of 3% per annum as of October 14th, 1942; subject, however, to a deduction of \$35.00 received from the Red Cross at Sydney a day or so later and to adjustment of interest.

September 26, 1955.

C. W. A. MARION
Deputy War Claims Commissioner

CASE No. 9556

Re: Walters

...The claimant objects to the proposed deduction on the ground that the \$58.00 was a purely gratuitous payment apparently made by way of a collection taken up among his friends and fellow-workers. It is, however, the practice of the Commission to deduct such gratuitous payments as compensation otherwise provided for. If such a deduction were not made, the claimant would apparently be making a profit out of the transaction...

...It is true that this amount (recommended) includes \$250.00 in cash which is a greater sum than the Commission is accustomed to awarding for loss of currency. The explanation given by the claimant for having such a large sum of money on his person is, however, reasonably satisfactory, and I am not disposed to disturb the award on that ground...

Dated this 7th day of March, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9557

Re: Coffin

...The deceased Elias Coffin apparently died intestate. In view of the length of time elapsed, the smallness of the award, and the unlikelihood of any outstanding claims affecting the estate of the deceased, I agree with the conclusion of the learned Deputy Commissioner that formal administration may properly be dispensed with, and the award paid directly to the claimant for herself and children...

The net award should be held by the claimant upon the following trusts: for herself, one-third; for her children, Clifford, Winnifred, and Christina, the remaining two-thirds in equal shares.

Dated this 8th day of May, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9576

Re: Notre Dame

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

The learned Deputy Commissioner notes that Counsel for the claimant has urged that the Report of the Advisory Commission on War Claims permits special rules to be made in cases of charitable associations. The reference is presumably to paragraph 31 on page 70 of the Advisory Commission's Report. The intention of that recommendation made by the Advisory Commission is, I take it, that charitable associations may be permitted to become claimants against the Canadian War Claims Fund if they are of a clearly Canadian character, in spite of the fact that they may not be formally incorporated companies or corporations. As the present claimant is found by the learned

Deputy Commissioner to be a duly constituted Canadian corporation, the making of such a special rule is clearly unnecessary for the adjudication of the present case.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$4,250.00 as an award for loss of property in the Far East, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 5th day of March, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9579

Re: St. Roch

Deputy Commissioner Choquette has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified the claimant, under the provisions of Rule of Procedure No. 20, that I consider it necessary to reverse the Deputy Commissioner's recommendation on the claim for personal injury, and to disallow that branch of the claims.

On review, Counsel for the claimant has submitted argument in support of the contention that the award for personal injury should be maintained. He has correctly pointed out that the presiding judge or commissioner of a tribunal who sees and hears the witnesses is normally in a better position to appraise the value of their evidence than is a reviewing officer who can merely read the evidence and examine the materials on file. This principle, however, in the case of the present Commission is subject to the necessity of obtaining uniformity of decision among cases presenting similar, or approximately similar, situations of fact. It is also subject to the general rule that a tribunal of review is not bound by inference of fact made by the tribunal of first instance if such inference is based on insufficient factual evidence. In my opinion, and with the greatest deference for the decision of the learned Deputy Commissioner, there is in this case not sufficient evidence to warrant the inference that the claimant's subsequent illness was directly caused, or in any substantial degree aggravated, by the treatment which she sustained during her 35-day internment in the camp at Chapei.

Apart, moreover, from the inadequacy of evidence as to such causation, it must be remembered that this Commission is limited, in the making of awards for personal injury, to pecuniary loss as the sole basis of compensation, and is bound to exclude as grounds for compensation from the War Claims Fund claims in respect of pain and suffering, inconvenience, loss of enjoyment of life, injury to health not resulting in impairment of earning capacity, and any shortening of expectation of life.

The learned Deputy Commissioner specifically finds that the claimant has not produced any relevant evidence in support of her claim for special damages, and his recommendation is frankly for a lump sum under the heading of general damages. In my opinion, such an award is not contemplated by the provisions of the War Claims Rules, and as no evidence of direct pecuniary loss has been established, this portion of the claims must fail.

Having reviewed the report of the Deputy Commissioner, I approve his recommendation as to the maltreatment claim, but I reverse his recommendation as to the personal injury claim.

I therefore recommend that the claimant be paid \$35.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

I recommend that the claim for personal injury be disallowed.

Dated this 11th day of April, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9580

Re: Ste. Julienne

The claimant, nee Isabelle Bernard, having established her Canadian status at the times prescribed, claims compensation in the amount of \$16,520 for maltreatment, personal injuries and other pecuniary losses.

The claimant, a member of the Community of Missionary Nuns of Notre Dame des Anges, was allegedly arrested by the Japanese at Hong Kong on or about January 5, 1942 and was not released until on or about August 30, 1945, namely a total of 1334 days.

(a)—*Maltreatment*: From January 6, 1942 to August 30, 1945 the claimant was held in her convent, owned by the above named community, and she claims the automatic award of \$1.00 per day as provided in the Rules. From the evidence and the information obtained from official sources the St. Clair School at Hong Kong cannot be considered as a concentration camp according to the Rules. Consequently, the automatic award of \$1.00 per day, for alleged maltreatment, cannot be granted for the time spent in the school even though it constituted house arrest. Moreover, has the claimant produced any positive evidence of maltreatment which might entitle her to a lump sum award? It should be noted that the claimant was in her own convent; that after a while she was even free to move around the city; that the Japanese did not attempt to annoy her; that although unsatisfactory as regards quantity and quality, the food she was able to obtain was similar to that of the civilian population of Hong Kong and that the privations endured did not result from malicious action taken against her and her companions but were due to the fact that she did not have sufficient money to obtain the food she required. The deplorable situation which existed at that time in Hong Kong is attributable to a state of war and not to maltreatment. This part of the claim cannot be allowed and is therefore dismissed.

It should also be noted that the claimant could have left Hong Kong for Macao as three of her companions did but that she refused that offer so as to remain in her convent.

(b) *Personal injuries*: The claimant states that because of the lack of food, the frequent bombing by day and by night and the terror which reigned in Hong Kong during the Japanese occupation, her "general state of health deteriorated" and her "nerves were shaken". In addition, she appears to have suffered from an epidemic, a fever similar to Spanish influenza, which ravaged the city of Hong Kong in the autumn of 1943.

The possibility of maltreatment being waived, these greivances can only be ascribed to a state of war and not to personal injuries according to the Rules. The entire civilian population of the area suffered from the said state of war.

The physical privations and psychological perturbation which resulted therefrom no doubt affected the claimant's state of health, but such effects are not ones for which compensation is provided by the Rules. This part of the claim must therefore be dismissed.

From the foregoing, the undersigned, to his regret, must disallow the claims for maltreatment, personal injury and other pecuniary losses together with that for repatriation expenses for which compensation is not provided by the Rules.

Ottawa, November 6, 1956.

(Sgd) FERNAND CHOQUETTE
Deputy War Claims Commissioner

CASE No. 9584

Re: St. Tharcicius

The claimant, nee Adrienne Gosselin, having established her Canadian status at the times prescribed, claims compensation in the amount of \$255 for maltreatment. The claim was heard by the undersigned at Montreal on October 6 and December 7, 1955.

According to the evidence produced in CASE No. 9580 and for the reasons stated in the decision, it can be ruled that the claimant's detention in the St. Clair School, Hong Kong, China, from January 5 to September 15, 1942, constitutes house arrest and not internment in a camp "administered or effectively controlled" by the Japanese; that, moreover, the privations suffered during that period do not constitute maltreatment according to the Rules.

From the foregoing, the claimant's claim cannot be allowed and is therefore dismissed.

Ottawa, November 6, 1956.

(Sgd) FERNAND CHOQUETTE,
Deputy War Claims Commissioner

CASE No. 9589

Re: McKinley

...At the hearing before me on Friday, December 16, 1955, at which the Department of Finance was represented, the circumstances of the loss of Mrs. McKinley's effects were inquired into fully. Nothing was then brought out, nor is there anything on the record, to suggest that the loss of the personal effects for which compensation is now claimed was directly due to war operations. There seems to be no doubt that the loss was due to circumstances arising from the existence of a state of war. Had Mrs. McKinley not been compelled to leave France in such haste the effects would in all probability not have been lost. Such losses, unless directly due to war operations, are not, however, compensable from the War Claims Fund. Having carefully considered all of the circumstances I am obliged to recommend that the claim should be disallowed.

December 21, 1955.

JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: Disallowance confirmed by Chief Commissioner, 21st. February 1956.

CASE No. 9600

Re: Shaw

Deputy Commissioner Bird has submitted to me his findings and recommendation on this group of claims, with his reasons therefor.

His report recommends payment of an award of \$10,000.00 as compensation for loss of articles included under Heads 3 and 4 in the presentation of claims before him. The learned Deputy Commissioner also recommends that the said award be not disbursed pending agreement between the claimant Alice Boyes Shaw and the Executors of the Estate of Mary Isabella Gray, or the making of an Order of a competent Canadian court directing the manner of distribution.

The claimants have been furnished with a copy of the Deputy Commissioner's report and have acquiesced in the amount of the award recommended. They have also agreed that the award of \$10,000.00, or such lesser amount as may finally be allowed by the Chief Commissioner, is to be divided equally between the Estate of Mary Isabella Gray and Mrs. Alice Boyes Shaw. They have further agreed that if any deduction is made from the award on account of the fact that the son of the late Mary Isabella Gray does not qualify as a claimant, such deduction shall be subtracted solely from the amount to be received by the Estate of Mary Isabella Gray, but that any deduction which may result from the failure of the claimants to make application in the Philippines will be equally borne by both parties.

The late John Roy Shaw was domiciled in the Province of Quebec, but died in the Philippine Islands on 21st January 1945. By his holograph last will and testament be bequeathed all his possessions of whatever nature to his sister, Mrs. Mary Gray.

Mrs. Gray died at Montreal on 26th March 1950. By her last will she appointed her two children, Dr. N. Milton Gray and Leona Isabella Gray, and the Royal Trust Company to be Executors of her estate. The residue of her estate, which would apparently include any compensation here concerned, was bequeathed in remainder (in equal shares *per stirpes*) to the respective families of her children, subject to life interests of her son and daughter, respectively.

As John Roy Shaw and his sister Mrs. Mary Isabella Gray were both deceased at the time of the appointment of this Commission, neither one of them can be considered to have presented a claim in his or her lifetime. It therefore becomes necessary to examine the national status of the present beneficiaries of their estates in order to determine their eligibility to share in any award which now may be made.

Mrs. Gray's daughter, Leona Isabella Gray Campbell, was born in Montreal and still lives in Canada (in Toronto). Her daughter, Margaret Campbell, and her two sons, Duncan R. G. Campbell, and Archie G. Campbell, were born in Montreal and live with their mother in Toronto. There seems to be no question as to the Canadian citizenship, and consequent eligibility, of the members of this branch of the Gray family.

Dr. N. Milton Gray was also a Canadian born in Montreal in October 1906, but he became a naturalized citizen of the United States on 10th January 1952. It is therefore obvious that he became ineligible to rank as a claimant, and that his share of any award has lapsed. Dr. Gray's daughter, Beatrice Ann Gray, was born at Montreal in August 1947, when her father was a Canadian citizen domiciled in the Province of Quebec. His son, Christopher Nelson Gray, was born in the State of New York on 3rd January 1950, while his father was still a Canadian citizen. Apparently no step has been taken to divest either of these children of their status as Canadian citizens by birth. It may be that Christopher Nelson Gray possesses a dual nationality and is now domiciled in the

country of his second nationality. Such a situation would be fatal to his eligibility if it existed at the time of the alleged loss. Dual nationality, (with domicile in the country of second nationality) at the time of presentation of a claim, does not, however, appear to have been regarded by the Right Honourable Advisory Commissioner on War Claims as an obstacle to eligibility.

I am therefore of the opinion that all the residuary beneficiaries of the estate of Mrs. Mary Isabella Gray are eligible to receive their shares of the award, with the exception of Dr. N. Milton Gray, who became a citizen of the United States before presentation of the claim.

I have drawn to the attention of the claimants, under the provisions of Rule of Procedure No. 20, the provision of the War Claims Rules which requires claimants to obtain satisfaction from such other sources as may be available, and which obliges the Commission to deduct such compensation as has been received from other sources or as might have been so received by the exercise of due diligence. The claimants, in objection to the application of such a deduction, have stressed the difficulties which would have arisen in the presentation of a claim to the Philippines War Damage Commission, more particularly on account of the death of Mr. Shaw, and of Mrs. Gray as the beneficiary under his will.

I am considerably impressed by this argument, and I am satisfied that it would have been difficult and expensive for the claimants to present their case before the Philippines Commission, or to obtain the full satisfaction which was available from that source. The order of priority of payment by the Philippines Commission apparently was that a claim up to \$500.00 would be paid in full, with approximately 52.5% paid of any balance over that amount. The Commission is, on the other hand, bound to apply the relevant provision of the War Claims Rules respecting "satisfaction otherwise provided for". In all the circumstances of the case, I think \$2,000.00 might be a fair estimate of the net compensation which, by reasonable diligence, the claimants might have received from the Philippines War Damage Commission in respect of the losses for which the learned Deputy Commissioner recommends an award of \$10,000.00.

As to the amount of the \$10,000.00 award, I am not entirely satisfied with the sufficiency of the evidence respecting ownership, identity, and value of the goods alleged to have been lost, or respecting the circumstances and causes of the alleged loss. Since, however, the learned Deputy Commissioner arrived at his findings on ownership and loss, as well as at his estimate of compensable value, after very careful consideration on the basis of protracted oral hearings, I am disposed to accept his findings and to approve his recommendation for payment of \$10,000.00, subject to deduction of \$2,000.00 deemed to have been received from the Philippines War Damage Commission, and to deduction of the share of the award to which Dr. N. Milton Gray would have been entitled if he had been eligible.

Pursuant to the agreement among the claimants, one-half of the net capital of the recommended award, or \$4,000.00, should be paid to Mrs. Alice Boyes Shaw as her share of the property owned as communal property by herself and her late husband John Roy Shaw.

The remaining net capital, or \$4,000.00, would pass beneficially to the children and grandchildren of the late Mrs. Gray. Dr. N. Milton Gray, if eligible, would be beneficially entitled to the revenue from one-half of this portion of the capital award during his lifetime. I would estimate the present value (*at the time of the loss*) of his life time interest at \$600.00. Since Dr. Gray is not eligible to share in an award, the sum of \$600.00 must therefore be deducted from the share which would otherwise go to the Gray Estate. This

would leave a capital balance of \$3,400.00, of which \$1,400.00 would be divided equally between Dr. Gray's children, and \$2,000.00 would belong to the children of Leona Isabella Gray Campbell, subject to their mother's life interest.

Distribution of interest (payable according to the formula set out below) should follow that of the capital shares.

With the foregoing variations, I approve the report of the learned Deputy Commissioner, and I recommend that there be paid:

(a) To Mrs. Alice Boyes Shaw \$5,000.00 as an award for loss of her share of property owned in common with her husband, the late John Roy Shaw, in the Philippines, such payment to be in orders of Priority Nos. 3(b) and 4(a), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,000.00 deemed to have been received from the Philippines War Damage Commission, with interest adjustment from an estimated *mesne* date of 1st January 1950.

(b) To the Estate of the late Mary Isabella Gray \$4,400.00 as an award for loss of property owned by the late John Roy Shaw in the Philippines, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,000.00 deemed to have been received from the Philippines War Damage Commission, with interest adjustment from an estimated *mesne* date of 1st January 1950.

The award to the Estate of Mary Isabella Gray to be administered by her Executors for the benefit of the residuary beneficiaries of her will to the exclusion of Dr. N. Milton Gray, who is ineligible to share in an award by reason of his United States citizenship at the time of presentation of the claim.

I further recommend that all other claims by the above-noted claimants, or by the Estate of Mary Isabella Gray be disallowed.

Dated this 18th day of April, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9605

Re: Wallace

Deputy Commissioner Hyndman has submitted to me two reports, setting forth his findings and recommendation, with his reasons therefore.

The claimant has been furnished with copies of the Deputy Commissioner's reports. She has expressed herself as being in agreement with his recommendation on the property claim, but has requested reconsideration of his disallowance of her claim for compensation for personal injury.

I was at first of the opinion that this claimant was precluded from filing her claim owing to the fact that she had not given a direct notice of her claim to this Commission before 18th January, 1955. It has subsequently appeared, however, that the claimant filed a claim with the British Ministry of Transport, and received an *ex-gratia* award of 150 pounds, apparently some time in 1948. This fact appeared on a summary listing those Canadians who received *ex-gratia* awards from the United Kingdom, which was furnished to the Commission. Owing to the interlocking nature of claims made to the United Kingdom Government and later to this Commission respecting loss of property at the sinking of the S.S. "*Athenia*", I have ruled that the appearance of the claimant's *ex-gratia* award on the list furnished to the Commission may be taken as notice of her claim respecting loss of property.

I do not, however, consider that the same reasoning would apply to her claim for compensation for personal injury, as no such claims were entertained by the British Ministry. Apart, therefore, from the reasons mentioned in the Deputy Commissioner's reports, I feel bound to hold that the claimant is barred from prosecuting her claim for personal injury by reason of her failure to give notice of that claim within the time prescribed by the war claims regulations. I may, however, say that I agree with the conclusion of the learned Deputy Commissioner that very strong evidence would be required to establish the causal relationship between the claimant's experience on the "*Athenia*" and her arthritic condition which was not diagnosed until 1949; I would also agree with the conclusion of the learned Deputy Commissioner that the medical evidence in the present case is far from being sufficient to establish such causal relationship.

For all these reasons, I have no alternative but to approve the Deputy Commissioner's recommendation on the personal injury claim and I accordingly recommend that this portion of the claim be disallowed.

I also approve, with a slight variation, the Deputy Commissioner's report on the property loss, and I recommend that the claimant be paid \$975.00 as an award for loss of property at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 3rd September, 1939, at 3% per annum; subject to deduction of \$603.00 received from the Government of the United Kingdom, with interest adjustment from 31st January, 1948.

Dated this 6th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9606

Re: Morris

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review.

I agree with the learned Deputy Commissioner's opinion that the sum of \$14,000.00 is a reasonable estimate of the pecuniary loss sustained by the daughter and son in consequence of the death of their father, the late Garnet Green Morris, Jr., caused by alleged bombing of a Japanese vessel on which he was being transported. I am, however, of the opinion that the son Garnet Green Morris, III, due to his more tender age, has suffered a greater pecuniary loss than his sister, and that therefore the total sum should be apportioned in the amounts of \$9,000.00 for the son and \$5,000.00 for the daughter. The daughter has been notified of this suggested revision, in accordance with the provisions of Rule of Procedure No. 20, and has agreed to the proposed increase of her brother's share of the award to the detriment of her own.

There is, however, one respect in which, I think, the Deputy Commissioner's recommendation should be revised for the benefit of Miss Denis Kay Morris. The learned Deputy Commissioner added Miss Morris' share of compensation recommended for maltreatment of her father and mother (\$461.50) to the total award granted for her own maltreatment (\$673.00), and arrived at a total of \$1,134.50. From that he deducted \$950.00 received by Miss Morris from the Government of the United States. That \$950.00 apparently had reference only to the maltreatment of Miss Morris herself. I am of opinion that the deduction

of the \$950.00 should cancel the award for Miss Morris' own maltreatment, but should not encroach on her share of the awards recommended for the maltreatment of her father and mother. On that view, her share of 50% of compensation recommended for maltreatment of her father and mother should be restored to \$461.50, without deduction. (See recommendation CASE No. 6026 of 20 March 1957).

With the foregoing variations, I approve the report of the Deputy Commissioner, and I accordingly recommend that there be paid the following amounts:

(a) To Miss Denis Kay Morris \$461.50 as her share of awards for the maltreatment of her father, Garnet Green Morris, Jr., and her mother, Margaret Helen Morris, whilst civilian internees in the hands of the Japanese, such payment to be in order of Priority No. (1-2);

(b) To Miss Denis Kay Morris (she having attained the age of 21 years) \$5,000.00 as her share of an award for pecuniary loss suffered by reason of the death of her father, the late Garnet Green Morris, Jr., such payment to be in order of Priority No. (1-2) and to bear simple interest from 9th January 1945 at 3% per annum;

(c) To the Montreal Trust Company, Administrator of the Estate of Garnet Green Morris, Jr., \$2,400.00 as an award for loss of property in the Far East by the late Mr. Morris, and for distribution (including interest) between his daughter Denis Kay Morris, and his son Garnet Green Morris, III, in equal shares according to the Intestate Succession Laws of British Columbia, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum;

(d) To the Montreal Trust Company in trust for Garnet Green Morris, III, \$461.50 as the latter's share of an award for the maltreatment of his father, the late Garnet Green Morris, Jr., and of his mother, the late Margaret Helen Morris, whilst civilian internees in the hands of the Japanese, such payment to be in order of Priority No. (1-2);

(e) To the Montreal Trust Company as Administrator of the Estate of Garnet Green Morris, Jr., \$9,000.00 for the benefit of Garnet Green Morris, III as the latter's share of an award for pecuniary loss suffered by reason of the death of his father, the late Garnet Green Morris, Jr., such payment to be in order of Priority No. (1-2) and to bear simple interest from 9th January 1945 at 3% per annum.

For the reason mentioned by the learned Deputy Commissioner, I recommend that the claim for compensation for the death of Mrs. Margaret Helen Morris be disallowed.

Dated this 5th day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9612

Re: Samuel

Deputy Commissioner Hyndman has submitted to me his findings in the form of an Interim Recommendation dated 15th April 1957 and a Supplementary Recommendation dated 27th January 1959, with his reasons in each instance.

The claimants have been furnished with copies of the Deputy Commissioner's reports and have expressed satisfaction with the awards recommended for

damage to building and loss of bank balance. They continue to urge that additional awards should be recommended for loss of insurance policies having cash surrender value, and for loss of proceeds of rental of farm at Kuzmice-Vitkoc in Slovakia.

As to the loss of insurance policies, I find myself in agreement with the learned Deputy Commissioner that the seizure or looting of the policies took place prior to the naturalization of the claimants, or at least that the evidence does not establish with sufficient cogency (the onus being on the claimants) that the seizure or looting occurred after the claimants had become Canadian nationals.

As to the claim for loss of rentals, the claimants submit that in order to establish a valid claim it is only material that enemy authorities collected the rentals, no matter whether Germans or through Slovak puppets. This submission is made with reference to the learned Deputy Commissioner's comment that "it is not satisfactorily established that the Germans actually received the wheat or its proceeds." I am not sure whether the difference between the finding made by the learned Deputy Commissioner and the present submission of the claimants is one of fact or of interpretation of the War Claims Rules. In either case, I am inclined to the view that the claimants' recent submission correctly states the relevant provision of the Rules and that it may be fairly inferred from the evidence that either the occupying Germans or their Slovakian puppets received and retained the stipulated rentals of the farm property.

The War Claims Rules provide that, though claims for loss of rentals of property damaged, destroyed or sequestered, must themselves be rejected, nevertheless rentals collected by enemy authorities and not returned to the Canadian owner should be regarded as furnishing a proper basis for a valid *money* claim. This, of course, means that the loss in such a case must be converted into Canadian currency at the rate prevailing on December 30, 1949, namely \$0.0220 to the koruna.

In this connection, the claimants seek to correct an apparent error in the hypothetical computation of rental value set forth in the learned Deputy Commissioner's supplementary recommendation. The stipulated rental for the property concerned was "a rent equal to the market price of 230 kilograms of wheat per acre yearly, payable in quarterly instalments in advance." The claimants agree with the learned Deputy Commissioner's estimate of \$1.25 per bushel as the Canadian equivalent of the value of wheat at the relevant times but, computing the value on that basis, correctly arrive at a resulting rental value equal to \$1,770.00.

They submit, however, that they are entitled to the rental for the four seasons from 1941 to 1945 inclusive, and not only for the two seasons which fell due after their naturalization in Canada. On this point, my view is that if the claim is valid the claimants would be entitled to reimbursement of confiscated rentals which accrued during the period elapsing between their naturalization and the end of hostilities. Four such rental payments would fall during 1944, a fifth in January 1945, and a sixth in April 1945, making a total related to six rental periods or one and one-half years.

On the other hand, from the somewhat meagre information available as to the prevailing market price of wheat in Czechoslovakia at the relevant times, I am inclined to the opinion that the \$1.25 basis is somewhat too conservative. Putting myself in the position of a jury, I would be inclined to estimate that the total rentals confiscated in the relevant period of one and one-half years, converted into Canadian currency at the rate prevailing on 30th December 1949, would be in the vicinity of \$4,000.00. Of that amount each claimant would be entitled to one-half.

The question of expenses was not finalized in the learned Deputy Commissioner's reports. The claimants estimated that they had spent respectively \$2,000.00 and \$1,500.00 for expenses incurred in Czechoslovakia in preparation of their claims. I am not convinced that such large expenditures were necessary for, or strictly relevant to, the presentation of the claims which have been established. It is, however, obvious that the claimants necessarily expended a considerable sum in Czechoslovakia in order to procure the necessary evidence and materials. After consultation with the learned Deputy Commissioner, I am of the opinion that \$400.00 would be a fair and appropriate reimbursement of such necessary total expenditures by both claimants.

With the foregoing variations, I approve the report of the Deputy Commissioner and I accordingly recommend that the claimants be paid the following amounts as compensation for property losses in Czechoslovakia, each payment to be in orders of Priority Nos. 3(a) to 4(b) inclusive and to bear simple interest from 1st January 1946 at 3% per annum:

- (a) to Dr. Sigmund Samuel, \$11,510.00;
- (b) to Mrs. Margaret Samuel, \$11,510.00;
- (c) to Dr. Sigmund Samuel and Mrs. Margaret Samuel jointly \$400.00 as an award for reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling the claimants to establish their claims, such payment to be without interest, but not to be taken into account for priority purposes.

Dated this 22nd day of April, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9619

Re: Pfeffer

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report.

On review her Counsel, Dr. Sigmund Samuel, has presented a series of written arguments supplemented by a very helpful oral presentation before me at Ottawa.

The claim for \$129,927.00, which is actually for losses of movable property in Hungary, may be sub-divided into two groups, the first for \$66,183.00 relating to a number of properties in the region of Gyoengyoes, and the second for \$63,744 relating to the claimant's interest in the Helvetia Vinecultural and Trading Company Limited.

The evidence in support of the whole claim, though perhaps as good as is reasonably possible in the circumstances, is somewhat vague and very incomplete. The inadequate nature of the evidence is complicated by the fact that the claimant herself and her advisers have on numerous occasions made allegations at variance with the substance of her present submissions. I may refer particularly to the statement mentioned by the learned Deputy Commissioner as having been made by Mrs. Pfeffer on 12th August 1950 in relation to her claim in Hungary, in which she alleges that the real estates in the region of Gyoengyoes were expropriated by the Hungarian State on the strength of the 1942 law for the protection of race, whereas the landed property of the Helvetia Company was later expropriated on the strength of the Decree numbered 600 M.E. of 1945.

I may refer also to an extract from a letter written by Dr. Samuel on 23rd September 1954, in which he states that Mrs. Pfeffer owned 40% of all shares of the Helvetia Company, "which Company suffered serious war damage through bombing of buildings, destruction of vineyards and equipment, and through looting of goods in stock."

The United Kingdom Legation in Hungary inspected the Helvetia property, and reported that the whole land and buildings had been nationalized, and had become "a National State Farm", and also that all the buildings had been entirely rebuilt, that there remained no trace of war damage and that the land and vines were in excellent condition. The Legation was apparently unable to obtain any authentic statement as to the condition of the property at the termination of hostilities in 1945.

Dr. Samuel strongly urges that the expropriation of the Gyoengyoes properties did not amount to confiscation, but was rather in the nature of State management, with a continued recognition of the ownership of the claimant and her family. This contention is supported by the opinion of Dr. Stephen Pozel, a practising lawyer in Budapest from 1913 until 1938. With the greatest of deference to the opinion of Dr. Pozel, I do not consider that it is possible in the circumstances to draw the desired distinction between expropriation and confiscation. So far as the Gyoengyoes region properties are concerned, I am therefore in agreement with the opinion of the learned Deputy Commissioner that these properties with their equipment and movables were confiscated by the Hungarian Government prior to the naturalization of the claimant.

The properties lost in this area would therefore not belong to the claimant at the time of the alleged looting and any loss which was suffered would not be compensable under the War Claims Rules. The situation, of course, might be entirely different if this portion of the claim were being determined under the Treaty of Peace with Hungary, and Mrs. Pfeffer's right to claim under that Treaty should be reserved.

As to the claimant's interest in the Helvetia Company, the situation is somewhat different. Though the evidence is fragmentary and incomplete, I am inclined to the view that there is sufficient material to warrant an inference that this property was not confiscated by the Hungarian State until after the passing of the 1945 Decree. No claim is now made to this Commission for damage to the immovable property, and from the report of the United Kingdom Legation it is obvious that no evidence is available as to the extent of war damage, if any, suffered by the buildings and vineyards. Detailed evidence of loss of movables is also far less complete than in the case of the Gyoengyoes estates. It is largely a matter of conjecture to determine what portion of the Company's movable property remained intact, through the Hungarian administration and the German occupation of the country, and was destroyed or looted in the period of the war following Mrs. Pfeffer's acquisition of Canadian national status. The most that the evidence would warrant is a token award, and in the capacity of a jury I would fix the value of the Helvetia goods lost by operations of war during the Canadian status of the claimant at \$20,000.00. The claimant's compensable share of that loss would be \$8,000.00.

As to costs, I consider that the sum of \$160.00 would reasonably reimburse the claimant for expenses necessarily incurred abroad in the preparation of the portion of her claim which has succeeded.

With the foregoing variations, I approve the report of the Deputy Commissioner.

I accordingly recommend that the claimant be paid:

(a) \$8,000 as an award for loss of property in Hungary, such payment to be in orders of Priority Nos. 3(a), 3(b), and 4(a), and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$160.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest, but not to be taken into account for priority purposes.

Dated this 27th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9620

Re: *Nadeau*

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further materials in support of the contention that she should be granted an award for maltreatment and consequent injury to her health.

Owing to the smallness of the property award, and owing to other circumstances appearing in the case, I agree with the opinion of the learned Deputy Commissioner that the claimant should be excused from the presumption of negligence in failing to obtain an award from the French authorities. I also agree with the Deputy Commissioner's conclusion that the claim for alleged loss of legacy under the will of a great uncle must be disallowed, as well as the claim for loss of earnings and interference with university training.

As to the maltreatment claim, the learned Deputy Commissioner finds that the claimant encountered harrowing experiences during her stay at Vauban camp in Besancon, and that doubtless much of that treatment must be considered as amounting to maltreatment. The learned Deputy Commissioner's opinion on that point is confirmed by the observations which I have made in CASE No. 9650—*Reverend Sister St. Louis de France*.

But, although conditions at Vittel were very much better than those prevailing at Besancon, it would appear that the claimant's internment at Vittel lasted only from April 30th to May 15th. I am doubtful if that period would be sufficient to restore completely the impairment of the claimant's capacity which may be inferred to have resulted from her experiences at Besancon. On the analogy of the numerous cases which I have dealt with pursuant to the findings in the *Sister St. Louis* case, I have reached the conclusion that this claimant also is entitled to a lump sum award for maltreatment at Besancon, and I would fix such award at \$100.00.

On the other hand, I agree with the learned Deputy Commissioner that the evidence is not sufficient to establish a causal connection between the claimant's maltreatment at Besancon and the subsequent illness from which she suffered in Paris. The evidence rather indicates that such illness may have been due to overwork or to strain that is a natural concomitant of the existence of a state of war....

... I recommend that the claims for personal injury, loss of earnings, interference with University training, and loss of legacy be disallowed.

Dated this 31st day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9623

Re: Mahler

... A careful examination of this claim leads me to the conclusion that the compensable value assessed by the learned Deputy Commissioner (Hyndman) is fair and reasonable in the circumstances. It must be remembered that the value prescribed by the War Claims Rules is neither cost price, nor the replacement value, nor the value to the claimant, but the reasonable market value as at 30th June 1939, with deduction for depreciation to the date of actual loss.

There is, in this case, an additional factor to be considered. The claimant did not become a naturalized Canadian until 15th June 1944. The War Claims Fund can therefore compensate him only for goods destroyed or lost between that date and the cessation of hostilities on 8th May 1945. From the evidence it is uncertain whether the whole of his loss occurred within that period, or not.

For the foregoing reason, I should not feel justified in increasing the award recommended by the Deputy Commissioner, and I therefore approve his report without variation.

There is, however, some evidence that the claimant incurred considerable expense abroad in recovering a portion of his goods and in establishing this claim. It is difficult to say just how much of his expense was directly related to the proof of the present claim, but I would recommend reimbursement in the amount of \$100.00 without interest.

Dated this 26th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9625

Re: Sandell

This claimant seeks an award out of the War Claims Fund for maltreatment alleged to have been suffered at the hands of the Germans while he was a prisoner of war in Western Europe.

I find from the evidence that the claimant was granted a landed immigrant status in Canada on January 21, 1940, and having been born in England on May 5, 1916, he was then a British subject. He has continuously resided in Canada since that time so that on the first day of January 1947, by virtue of Section 9 (1) (b) of *The Canadian Citizenship Act* he then became a Canadian citizen, and, not having since lost his citizenship, he was a Canadian citizen at the time of the presentation of his claim.

In order to be eligible for compensation under the War Claims Rules, the claimant must also have had a Canadian status at the time of the acts on which his claim is founded. The Department of Citizenship has ruled that the claimant did not have a Canadian domicile at the time of his imprisonment to be dealt with hereinafter, and that decision or ruling is binding on this Commission. But the Rules go further and provide that a Canadian status may be established by proof that, at the time of the acts causing the loss or damage complained of, the applicant was a British subject domiciled in Canada according to the principles of the Common Law. Those principles are chiefly to be found in cases respecting the distribution of the estates of deceased persons and in divorce cases.

The evidence discloses that the claimant came to Canada in November of 1941 as a member of the Royal Air Force to take training in the Commonwealth Air Training Scheme. During a part of his training he was stationed at

Moncton. He says that he was not long in Canada before he decided to make this country his home. While spending one of his leaves in Montreal, he met a New Brunswick girl who was working there, and on June 17, 1942 they were married. The wife gave up her job and returned to live at her mother's home in Wilson's Creek, New Brunswick. They did not purchase any real estate but they did purchase bedding and household linens.

The claimant states that it was his wish to stay in Canada, but that he was obliged to return to England with his unit. He claims that then he planned to complete the required number of operations to entitle him to re-posting to Canada but, before this requirement was met, he was shot down and made a prisoner of war. Some of the letters written to his wife, while he was a prisoner of war, indicate conclusively that it was the claimant's intention to return to Canada as soon as he was released. The wife supports this by her statement that they purchased household effects and stored them at her mother's home as they intended to live there temporarily when her husband would return to Canada. The evidence of the claimant's intention is also in a measure supported by the statement of Mr. A. C. Calder. Having seen and heard the claimant, I have no doubt that while he was stationed in Canada he definitely decided to make Canada his home and that he would not have returned to England had it not been for the order of his superior officers in the Air Force.

Halsbury, Second Edition, Volume 6 at page 206 says:

"A British subject, in whatever part of the Empire he may be domiciled, does not lose his existing domicile by entering into the military, naval, or civil service of the Crown, and that domicile remains unchanged into whatever part of the world his duties may take him; but this statement is subject to the qualification that if clear proof of an intention to settle can be derived from other circumstances, a domicile may be acquired."

In the Scottish case of *Sellar v. Sellar*, (1942) S.C. 206, it was held:

"That, while a soldier or a sailor might acquire a domicile in the place where he was stationed under orders, his residence there must, before he can do so, also be voluntary and of his choice."

In *Wilkinson v. Wilkinson*, (1948) 1 W.W.R., McBride, J. in the Supreme Court of Alberta said at page 254:

"Perhaps as succinct and perspicacious a statement of the law on the problem before me is to be found in the Massachusetts case of *Moor v. Harvey*, (1880) 128 Mass. 219, where the question of whether plaintiff was entitled to a judgment on certain promissory notes turned on whether defendant had changed his domicile to Washington. On appeal, Morton, J. delivers the only judgment and at p. 220 he says:

'...the defendant was in military service subject to the orders of his superior officers, but it is not true, as contended by his counsel, that therefore he could not gain a new domicile in any place to which he was ordered. In all matters not involved in his military duties, he was *sui juris*, and had the capacity to change his domicile to any place if he saw fit;'

and it is decided that it was a question exclusively for the jury to determine on all the evidence whether such a change had taken place."

And, finally, there is the English case of *Donaldson v. Donaldson*, 1949 Probate, 363, wherein the question of domicile of a member of the R.A.F. arose. Ormerod, J. said at pages 365-66:

"It was submitted by counsel for the petitioner that the respondent was living in Florida in the first place merely because his service demanded it and, therefore, that he could not be said to have acquired a residence or to be residing there, as he was not residing there at any time from choice. I am quite satisfied that, although he went to Florida in the first place because it was his duty to go and, indeed, remained there the whole time for the same reason, nevertheless he had during the time that he was in Florida conceived the desire to remain there, and that, although he was in Florida in the course of his duties, he was also there from choice, and had every intention of remaining there from choice—that is to say, I am satisfied that he was in fact residing and had in fact acquired an intention of continuing to reside in Florida."

While none of the foregoing cases are binding on this Commission, they do express the views as to the law held by the eminent judges who decided them, that, when the right of a man in service to change his domicile was squarely raised, it was held that such right exists in law.

I, therefore, find that while the claimant was stationed in Canada as a member of the Royal Air Force he acquired a domicile in Canada which he still retained during the period of internment hereinafter mentioned, although by command of his superior officer he returned to England.

As the general presumption of the fact of maltreatment recognized by the Report of the Chief War Claims Commissioner has not been rebutted, the claimant is entitled to the additional presumptions that he suffered a subsequent incapacity to work, which subsisted for some period of time after liberation.

I find from the evidence that the claimant was shot down over Holland on the 26th of June, 1943 and that he was in custody for a total of 648 days. He was transported in a box car on one occasion. He was forced to participate in "hunger marches" of early 1945 for about 18 days after a *preceding* period of severe malnutrition.

In all the circumstances, I recommend that the claimant be awarded \$214.50.

Dated this 25th day of October A.D. 1955.

(Sgd) C. ST. CLAIR TRAINOR
Deputy War Claims Commissioner

...Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation, except to comment on the learned Deputy Commissioner's statement that the decision or ruling of the Department of Citizenship and Immigration as to the claimant's lack of "Canadian domicile" is binding upon this Commission. In strictness, the "ruling" of the Department is in effect a preliminary opinion, and is subject to review by reference to a Special Inquiry Officer appointed under the provisions of the Immigration Act. As the Department's opinion is obviously correct, the question of such a reference does not arise in this case, and the claimant's national status under the War Claims Rules can be more specifically decided, as the learned Deputy Commissioner has done, from the point of view of his common law domicile at the time of internment.

The learned Deputy Commissioner apparently made an error in transcription of the date at which the claimant was granted the status of a landed immigrant. The actual date appears to have been 21st January 1946, instead of 21st January 1940. The claimant would therefore not automatically become a Canadian citizen on 1st January 1947, as he had not then fulfilled his requisite five years as a landed immigrant. More recently the claimant has applied for, and been granted, a certificate of Canadian citizenship dated 28th August 1956. I am of the opinion that the granting at this late date of a certificate to which the claimant would have been entitled on 24th August 1954, the date of the initial presentation of his claim, confers on the claimant the status of a Canadian citizen at the time of presentation, within the requirements of the War Claims Rules.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that the claimant be paid \$214.50 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 5th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9650

Re: St. Louis de France

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted elaborate arguments in support of the contention that the Deputy Commissioner's recommendation should be reversed and an award recommended. No new materials are presented in the course of these arguments, but they are based rather on a sympathetic approach to the merits of the claim.

I have very carefully considered all aspects of the case, from the point of view of the findings made by the learned Deputy Commissioner, as well as from the materials on file and the transcript of the oral evidence adduced. The evidence before the learned Deputy Commissioner was principally given by one of the claimant's fellow internees, Sister Gemma de l'Eucharistie. In the course of my review, I have had the advantage of examining the materials on file in a number of groups of cases in which internment in Camp Vauban at Besancon was involved. I have had the further advantage of hearing the oral evidence of three persons who were themselves interned in that camp.

As this case is distinctly on the borderline, I have very carefully examined both the evidence relating to conditions of actual internment and the circumstantial background involved in the act of internment itself.

It appears that, early in December of 1940, allegedly as a reprisal for bad treatment of German women in British custody, the German authorities ordered a roundup of about 4,000 women (mostly British subjects) in various parts of France, and directed that they should be transported to Besancon and interned there in a series of barracks (Vauban) which had recently been vacated by French prisoners of war.

The evidence leaves no question that conditions were deplorable at the time when the internees arrived at Besancon and were placed in the barracks.

One difficulty arises from the fact that conditions varied considerably from building to building, from floor to floor, and from room to room, of the large and rambling barracks. The evidence, however, gives a general picture of filth and unsatisfactory accommodations at the time when the internees arrived. Those on the fourth floor seem to have fared the worst, as preparations proceeded more slowly for them, and many had to sleep with only a pailasse on the concrete floor for the first night or two. Bunks were gradually installed, but the evidence is that at least some of the straw mattresses retained their original dampness throughout the approximately five months of internment.

The internees had to go outside for fuel, food, and toilet purposes, and there was considerable exposure to cold owing to standing in queues in winter weather. These conditions were particularly difficult for fourth floor internees.

Stoves and a certain amount of fuel were available for the dormitories, but at least some of the stoves smoked so badly that they had to be extinguished or the windows kept open.

One of the principal complaints was the utter lack of suitable or satisfactory hygienic facilities.

The food provided by the Germans was quite inadequate and mostly unpalatable.

It is admitted that conditions gradually improved to a certain extent. The internees themselves were allowed to clean up the premises as well as they could, and to assist in the preparation of meals. The services of French prisoners were made available for the installing of bunks and other improvements. The Germans were admitted to be good organizers. The meager food ration was, after the first month or so, supplemented by parcels from Religious Orders and from the Red Cross. A French physician who was a prisoner of war was made available for medical consultations, and internees who required hospital treatment were taken to a hospital in the city of Besancon.

Despite the improvements, however, conditions remained very unsatisfactory. The official British handbook compiled by Satow and Sée (p. 106) says: "The accommodation was entirely unsuitable; there was no fuel, practically no food and the amount of clothing which internees had been allowed to take with them was very limited. As a result the internees throughout the winter months suffered very great hardship. There was no substantial improvement until the camp was closed and its inmates removed in 1941 to Vittel."

The evidence in the cases before this Commission indicates some modification of the British handbook's comments, particularly as the internees admit that some fuel was available, and that there was a substantial improvement in many respects. The ultimate closing of the camp and the removal of the internees to Vittel (where conditions were reasonably satisfactory) gives rise, however, to a reasonable inference that conditions at Vauban remained very unsatisfactory and continued to cause great hardship to the inmates. I think it may also be reasonably inferred that submission to such conditions for five or six months would cause some degree of incapacity to work (though not necessarily severe), subsisting for some time (though not necessarily substantial), after subsequent liberation. I am therefore of the opinion that this claimant and her fellow internees are entitled to a modest lump sum award for maltreatment during their internment in Camp Vauban at Besancon. By comparison with awards made in somewhat similar cases, I would fix the amount of this claimant's award at \$100.00.

As to the claim for personal injury, the claimant states that the resulting illness alleged was anemia from 1947 to 1955, and a throat ailment in 1952. There is evidence of 15 days spent in hospital and two years spent as a rest period. It is, I think entirely impossible to infer with any reasonable accuracy

that the claimant's illnesses were directly caused or substantially aggravated by the hardships to which she was subjected during the relatively short period of her internment at Besancon. I therefore agree with the learned Deputy Commissioner that this portion of the claim should be disallowed.

Having reviewed the Deputy Commissioner's report, I reverse his findings and recommendation to the extent above mentioned.

I accordingly recommend that the claimant be paid \$100.00 as an award for maltreatment of herself whilst a civilian internee in Europe, such payment to be in order of Priority No. (1-2).

I recommend that the claim for personal injury be disallowed.

Dated this 30th day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9660

Re: Fisher

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has omitted presentation of further materials on review, except to point out that he was in custody for a considerably longer period than the 350 days mentioned by the Deputy Commissioner's report.

It appears that the item of 350 days arose from an error in transcription and that the actual number of days of this claimant's custody (excluding 17 days at liberty, which cannot be considered for compensation under the War Claims Rules) was 716.

On review of this claim on the basis of that correction, I find that it makes no difference in arriving at the lump sum award under the formulae adopted by the Commission, for two reasons: (a) the recommended award is a lump sum, and is based on the proven or presumed incidents of maltreatment, of which the length of detention is a relatively minor factor; (b) under the recommendation of the learned Deputy Commissioner, the claimant received the benefit of the normal minimum award of \$200.00, and the increase due to the correction in his number of days of internment does not bring the total amount up to that normal minimum.

I therefore approve the report of the Deputy Commissioner without variation, and I recommend that the claimant be paid \$200.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 31st day of January, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE NO. 9672

Re: Burno

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's reports. On review, his counsel has submitted an elaborate argument in support

of the contention that his application for inclusion on the Volksliste, and his subsequent inclusion on that list on 5th May 1941, did not affect his former status as a Canadian national. He has further proposed that he would endeavour to mitigate the effect of his application by procuring, from official sources in Poland and in the United Kingdom, confirmation of his allegation that he continued to supply the British Intelligence Service with information. No such confirmation has been forthcoming.

I see no alternative but to approve the report of the learned Deputy Commissioner dated 28th November 1957. It appears that no proceedings were taken to revoke the claimant's naturalization in Canada, but I think it must be considered to have been equitably forfeited by his inclusion on the Volksliste. His application was a voluntary act, even if undertaken in order to avoid the unpleasant consequences of maintaining his Canadian status. As a British subject, he was prohibited from all intercourse with the enemy during war-time, and his naturalization would doubtless have been formally revoked if the Canadian authorities had known the circumstances at the time.

I find that the claimant is not eligible to present a claim under the Canadian War Claims Rules and I recommend that this claim be disallowed.

Dated this 10th day of November A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 5 (IT) (9677)

Re: Turriziani

Deputy Commissioner Francis, to whom this claim was referred, has reported to me his findings and recommendation, with his reasons therefor.

Upon reviewing the report of the Deputy Commissioner, I am of the opinion that this claimant's eligibility, and his entitlement to the awards recommended under the *War Claims (Italy) Settlement Regulations* have been duly established.

I therefore approve the report of the Deputy Commissioner, but I must note a reservation to his comment that "under the Canadian War Claims Rules the claimant may be eligible for payment of the remaining one-third of the amount of the loss as established by this recommendation, and this aspect of the matter will be dealt with separately in due course". In cases where claimants are eligible to claim compensation under the Canadian War Claims Rules, as well as under the *War Claims (Italy) Settlement Regulations*, it has been found by the War Claims Commission that the compensable damages have to be assessed by different methods and valued at different dates. The result frequently is that two sets of claims do not work out in the simple ratio of two-thirds under the *War Claims (Italy) Settlement Regulations* and one-third under the War Claims Rules. In other words, compensation payable under the War Claims Rules must be assessed on the basis of principles laid down in those Rules, and independently of the *War Claims (Italy) Settlement Regulations*, except in so far as payments made under the latter regulations are deducted as compensation otherwise provided for from awards recommended under the War Claims Rules.

With this reservation, I accordingly recommend that the claimant be now paid, pursuant to the *War Claims (Italy) Settlement Regulations*, the following amounts:

- (a) Two thirds of the property loss of 1,700,495 lire
valued as of 27th October 1952 lire 1,133,664
 - (b) One hundred percent of award in respect of fees
and costs incurred by claimant in establishing
claim, also valued as of 27 October 1952 lire 30,000
- lire 1,163,664

The claimant has expressed himself as being dissatisfied with the amount of the damages assessed in his favour by the Deputy Commissioner. I may therefore indicate that, notwithstanding payment of the awards hereby approved, this recommendation is subject to further review in conjunction with the claimant's claim for payment of the balance of compensation for which he may be eligible from the Canadian War Claims Fund.

Dated this 24th day of November, A.D. 1955.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

NOTE: *Recommendation under the War Claims Rules follows.*

CASE No. 9677

Re: Turriziani

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and has requested a review of the recommendation in the light of additional documents since presented. As in the case of the claim under the *War Claims (Italy) Settlement Regulations*, I have referred this claim back to the learned Deputy Commissioner for reconsideration. He reports to me that he discovers in the new materials nothing which would justify an increase in his original findings and recommendation.

The new documents do not appear to have been considered or approved by the officers of the Italian Ministry of Finance, on whose estimates of damage the learned Deputy Commissioner substantially based his original findings. They appear to be rather a recapitulation of the original estimates made by the claimant's own surveyor in 1948, corrected with respect to a few details, and now attested by certain municipal officers of Frosinone. I have carefully considered the case from all angles, and I agree with the conclusion of the learned Deputy Commissioner.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$1,683.08 as an award for loss of property in Italy, such payment to be in order of Priority No. 3(a), and

to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,816.56 received under the terms of the Treaty of Peace with Italy, with interest adjustment from 16th December 1955.

Dated this 13th day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: See preceding recommendation under War Claims (Italy) Settlement Regulations.

CASE NO. 17(IT) (9689)

Re: Carelli

Deputy Commissioner Francis, to whom this claim was referred, has reported to me his findings and recommendation, with his reasons therefor.

In respect to Miss Maria Carelli's claim of sole ownership in the properties damaged at the relevant times, the learned Deputy Commissioner finds that there is a serious doubt. I agree, however, with his conclusion that, so far as the claim under the Treaty of Peace with Italy is concerned, it is not necessary to segregate the interests of Miss Carelli and her mother in the property involved.

On the other hand, since such a distinction may become necessary when the claim under the Canadian War Claims Rules is considered, I deem it advisable to re-state the eligibility of the claimant mother in the following respects.

Mrs. Carelli is certified by the Department of Citizenship and Immigration to have acquired the status of a Canadian citizen on 1st January 1947. This status was apparently acquired by the broadly embracing provisions of Section 9 (1) (d) (II) of the *Canadian Citizenship Act*, which accorded Canadian citizenship to any woman who was a British subject and had been lawfully admitted to Canada for permanent residence before 1st January 1947. This provision was applicable even though the subject might never have acquired "Canadian domicile" in the statutory sense, or though, if she had acquired it, she had in the meantime lost her Canadian domicile in all senses of the expression. The Canadian citizenship of Mrs. Carelli is therefore based on two factors: (a) her acquiring of the status of a British subject by marriage to a naturalized British subject on 2nd April 1930; and (b) her admission to Canada for permanent residence on 20th May 1930.

Following the death of her husband, Mrs. Carelli left Canada in October 1939 and returned to Italy, where she has continued to live ever since. The Department of Citizenship and Immigration is, quite properly I think, of the opinion that in view of her lengthy absence she would have relinquished any claim to "Canadian domicile". I think it would necessarily be considered, with equal correctness, that she also lost her common law domicile in Canada. It is admitted that Mrs. Carelli was not granted a certificate of naturalization in Canada, nor was her name included in such a certificate. Her status from October 1939 to 1st January 1947 would apparently be that of a British subject domiciled in Italy. She will therefore obviously not be eligible to claim against the Canadian War Claims Fund as she did not possess Canadian status within the meaning of the War Claims Rules at the time of her war losses.

Eligibility to claim under the Treaty of Peace with Italy may, however, be established on a different basis, and I think Mrs. Carelli meets with the requirements of the Treaty and of the *War Claims (Italy) Settlement Regulations*. She was a British subject, and therefore a United Nations National, on

15th September 1947, the date of the coming into force of the Treaty, as well as on 3rd September 1943, the date of the armistice with Italy (Treaty, Part VII, Article 78, 9(a)). She was also a Canadian citizen on 15th September 1947. These combined factors render the mother, as well as the daughter, eligible to claim under the Treaty, though not under the Canadian War Claims Rules. . .

Dated this 30th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

NOTE: *Recommendation under the War Claims Rules follows.*

CASE No. 9689 (17 IT)

Re: Carelli

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, as well as with copies of the reports made by the Deputy Commissioner and by myself as Advisory Commissioner in respect to their claim under the Treaty of Peace with Italy. The claimants have omitted presentation of further materials on review.

In my report to the Honourable, the Minister of Finance, as Advisory Commissioner on claims under the Treaty of Peace with Italy, I intimated that the claimant Mrs. Maddalena Carelli would not be eligible to claim against the Canadian War Claims Fund because, in my opinion, she had relinquished her Canadian domicile, both within the meaning of the Immigration Act and at common law.

I have since given careful study to the provisions of Qualification (v) on page 24 of the Report of the Advisory Commission on War Claims, and it now appears to me that a literal interpretation of those provisions would admit the claimant as possessing Canadian status at the time of her loss. To paraphrase the relevant words of Qualification (v), the claimant was (v) a woman. . . who (a) before the relevant time was married to a man who at the time of the marriage (iii) had been granted a certificate of naturalization granted in Canada and (i.e. the man) had not become an alien at the relevant time, and who (i.e. the woman) at the relevant time was a British subject and had been lawfully admitted to Canada for permanent residence. I must confess that a literal interpretation of Qualification (v) conveys to my mind obvious anomalies, as it confers a certain permanency on a female claimant's national status, such permanency being based on her husband's status at the time of the marriage and on her own admission to Canada for permanent residence, irrespectively of any subsequent change of marital status or any subsequent abandonment of Canadian domicile. There does not appear, however, to be any basis for the interpretation of Qualification (v) in other than its literal sense, and I have therefore come to agree with the conclusion of the learned Deputy Commissioner (though for different reasons) that the claimant Mrs. Maddalena Carelli possessed Canadian national status within the meaning of the War Claims Rules at the time of the act causing her loss or damage.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimants Miss Maria Carelli and Mrs. Maddalena Carelli be paid jointly \$969.11 as an award for loss of property in

Italy, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$994.87 received under the Treaty of Peace with Italy, with interest adjustment from 13th December 1956.

Dated this 3rd day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: See preceding recommendation under War Claims (Italy) Settlement Regulations.

CASE No. 9693

Re: Zeissler

...As the claimant was apparently late in filing a claim for compensation from the German authorities, and his claim was rejected on the ground of late presentation, this must be considered as a case in which payment in respect of the claim could have been made from a source other than the War Claims Fund, and therefore the claimant would be deemed to have received at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Dated this 9th day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9694

Re: Tagliamonti

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and on review has submitted further arguments in support of the contention that his award should be increased.

The claimant has not submitted any new materials on review, but confines his argument to a protest against the disallowance of his claim under the Treaty of Peace with Italy. That claim was disallowed by reason of the fact that the first notice given by the claimant was on 20th September 1952, whereas the *War Claims (Italy) Settlement Regulations* require an application in writing to the Government of Canada on or before the 31st day of December 1951.

For the reasons mentioned by the learned Deputy Commissioner in his report on the "Italian" claim, confirmed by my report, as Advisory Commissioner, to the Minister of Finance dated 9th November 1956, I had no alternative but to recommend the disallowance of the claim so far as it was made under the Treaty of Peace with Italy. This Commission has, on the other hand, no alternative but to recommend deduction from any award under the War Claims

Rules, of the estimated amount which the claimant would have received from the Italian Treaty Fund if he had made his application within the prescribed time and prosecuted his claim under the Treaty with due diligence.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid:

(a) \$912.00 as an award for loss of property in Italy, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$952.22 deemed to have been received under the Treaty of Peace with Italy;

(b) \$77.45 as an award for reasonable expenses necessarily incurred by the claimant abroad in order to establish his claim, such payment to be in order of Priority No. 3(a) and to bear simple interest from an estimated *mesne* date of 23rd December 1953 at 3% per annum.

Dated this 16th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Note: This claimant was paid on 16th September 1960 an award of \$932.72 and \$77.45 expenses under the Treaty of Peace with Italy, by virtue of the extension of time for filing claims authorized by P.C. 1960—1019. The expense item was refunded by transfer to the War Claims Fund, from which it had previously been paid.

CASE No. 9707

Re: *Barwick*

Deputy Commissioner Trainor has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

I consider that the method employed by the learned Deputy Commissioner for estimating the pecuniary loss requires some re-statement. He uses the criterion of "intrinsic value" on account of the lack of market prevailing in Shanghai at the actual time of the loss. It is, however, to be noted that the learned Advisory Commissioner on War Claims foresaw this very difficulty, and made a recommendation now incorporated in the War Claims Rules, to the effect that the reasonable market value of physical assets lost on land should be assessed at a "notional time of loss", the fixed notional date respecting losses in the Far East being 30th June 1941. The proper method of computation would therefore be to assess the reasonable market value of the goods, or of goods similar in location and condition, at 30th June 1941, and to deduct from that assessment an allowance for depreciation, if applicable, to the actual time of loss.

It appears to me, however, that substantially the same result would be arrived at as the learned Deputy Commissioner reached by applying the criterion of intrinsic value. I therefore approve his report without variation.

I accordingly recommend that the claimant be paid the sum of \$1,600.00 as an award for loss of property at Shanghai, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 13th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9711

Re: Taylor

This is a claim for maltreatment of the above named claimant while a prisoner of war in Europe.

Owing to the relatively short period of the claimant's custody, and the prima facie absence of evidence of severe mistreatment as a prisoner of war, I hold that the general presumption of the fact of serious maltreatment recognized by the Report of the Chief War Claims Commissioner has been rebutted.

Notwithstanding the rebuttal of the general presumption, I find from the claimant's evidence that he was in custody a total of 57 days, and that during that period he was subjected to some measure of maltreatment, resulting in some degree of incapacity to work, which persisted for at least some time after his liberation.

I find that the claimant was a Canadian within the meaning of the War Claims Rules at all relevant times.

In all circumstances of the case I recommend that the claimant be awarded a lump sum of \$57.00.

Dated this 21st day of February A.D. 1956.

C. W. MARION

Deputy War Claims Commissioner.

NOTE: Award confirmed by Chief Commissioner 8 May 1956.

CASE NO. 39(IT)(9713)

Re: Bevilacqua

Since my Interim Recommendation of 24th April, 1956, this claim has been referred back to Deputy Commissioner Francis for further consideration in the light of information received to the effect that the Italian Department of Finance has given instructions to suspend all processing and consequent payments regarding war claims submitted by Canadian citizens.

I am of the opinion that the learned Deputy Commissioner properly infers that this claimant need expect no payment from the Italian authorities on account of the expropriation (if it were such) or confiscation of his property for airport purposes. I also agree with the conclusion of the Deputy Commissioner that in the circumstances the claimant is entitled to compensation under the provisions of the *War Claims (Italy) Settlement Regulations*.

Upon reviewing the report of the Deputy Commissioner, I am of the opinion that this claimant's eligibility, and his entitlement to the awards recommended under the *War Claims (Italy) Settlement Regulations* have been duly established.

I therefore approve the report of the Deputy Commissioner without variation, and I accordingly recommend that the claimant be now paid, pursuant to the *War Claims (Italy) Settlement Regulations*, the following amounts:

- | | |
|---|----------------------|
| (a) Two-thirds of the property loss of 4,029,790 lire
valued as of 27th October 1952 | lire 2,686,527 |
| (b) One hundred percent of award in respect of fees
and costs incurred by claimant in establishing
claim, also valued as of 27 October 1952 | lire 30,000 |
| | <hr/> lire 2,716,527 |

As to the claim under the Canadian War Claims Rules, I agree with the learned Deputy Commissioner that the confiscation of the property was not effected on the ground of the enemy character of the Canadian owner, and was therefore not occasioned by an operation of war within the meaning of the Rules.

I am therefore bound to confirm my recommendation for disallowance of the claim against the Canadian War Claims Fund as made to the Honourable, The Secretary of State, on 24th April, 1956.

Dated this 21st day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

CASE No. 9714

Re: Ratcliff

...The claim for compensation is made in consequence of the fact that Japanese forces took possession of the operations of the corporations in which the claimant held shares or debentures. As a result no dividends were declared or interest paid in respect of those investments during the period of the war.

At the conclusion of the hearing before me I explained to the claimant that his claim fell directly under para. 4 of p. 63 of the Rules whereby Deputy Commissioners are directed that such claims must be disallowed for the reasons given in paras. 1, 2 and 3 on the same page.

For the foregoing reasons I must reject the claim and recommend accordingly.

10 April, 1956.

H. I. BIRD
Deputy War Claims Commissioner

NOTE: *Disallowance confirmed by Chief Commissioner 6 June 1956.*

CASE No. 20(IT)(9720)

Re: Saalheimer

...I find, therefore, that goods of the claimant of the value of 80,000 lire, valued as of June 30, 1939, were sequestered by the Italian authorities in May, 1943, and were subsequently confiscated by the German authorities and removed by them from Trieste to a destination unknown, that the claimant has not since been put in possession of the said goods, and that she is eligible under the Treaty of Peace with Italy and the *War Claims (Italy) Settlement Regulations* to be granted compensation for her loss to the extent of two-thirds of the amount thereof. I recommend, accordingly, that she be granted an award of compensation in the sum of 53,333 lire, valued as of June 30, 1939. In accordance with the terms of the settlement made with the Government of Italy in respect of Canadian war claims, the amount of the award will be payable in Italian currency valued as of October 27, 1952, or its equivalent in Canadian funds.

No costs have been incurred in Italy in establishing the claim and no costs will be allowed.

As the claimant did not become a citizen of Canada until October 12, 1950, more than six years after the loss of the goods, her claim for compensation under the War Claims Rules should be disallowed. . . .

July 7, 1955.

JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: *Italian Treaty Award confirmed by Thane A. Campbell, Advisory Commissioner, 20th October 1955.*

The claimant has requested a review of the award made to her under the Treaty of Peace with Italy by recommendation of Deputy Commissioner Francis, as approved by my report dated 20th October 1955. She particularly requests consideration of payment of interest on the compensation recommended.

There is, of course, no interest payable on awards for compensation recommended under the Treaty of Peace with Italy. What the claimant evidently has in mind is the payments of interest on awards to claimants who are also eligible to claim under the Canadian War Claims Rules.

If the claimant were eligible to claim under the War Claims Rules, as well as under the Treaty of Peace with Italy, any award recommended for her under the War Claims Rules would bear interest. The Deputy Commissioner has, however, found that the claimant did not become a Canadian until 12th October 1950. She therefore does not qualify under the provision of the War Claims Rules which requires a claimant to have been a Canadian at the time of the act occasioning the loss complained of.

I have therefore no alternative but to approve the finding of the learned Deputy Commissioner on this point, and to recommend that the claim under the War Claims Rules be disallowed.

Dated this 28th day of February, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9725

Re: Mirotan Investment Company Limited

This is a claim by Mirotan Investment Company Limited hereinafter called Mirotan, in the sum of \$476,539.00 for loss of earnings in a Polish Company called Slaskie Zaklady Elektryczne, Spolka Akcyjna, a large public utility in Katowice, Poland, which was confiscated and operated by the German Government from 1939 to 1945.

Mirotan is a Canadian Company incorporated by Letters Patent under the Dominion Companies Act on the 13th March 1939, with head office in Charlottetown, Prince Edward Island.

All shares of Mirotan were and are owned by Michael Lewin and his wife Rosalia Lewin, except certain directors' qualifying shares.

However, inasmuch as the Company claimant is a holding or personal corporation, the question of eligibility to claim arises in the case and must be considered.

Mr. Lewin who was born in Minsk, Russia, and later a French national, landed in Canada for permanent residence in July 1940, and was naturalized in Canada on 10th October, 1944.

On the 5th June 1939, said Michael Lewin who was the owner of 3940 shares in said Polish Corporation, transferred said shares to Mirotan, as well as other securities, so that prior to World War II, Mirotan became and still is the owner of said shares.

Mirotan is and has been at all times a holding or personal corporation and treated as such for income tax purposes, and but for the provisions of the Rules of the Commission hereinafter mentioned would be eligible to claim compensation for losses due to war action in Poland.

The claim is for applicant's proportionate share of the profits of the Polish Company during the years 1939 to 1945.

Prior to confiscation the Polish Company was a financially successful concern, and it is alleged on good authority, earned about 8% on capital. During the German administration it was increased in capacity and it is alleged earned equal, if not greater profits, than before its confiscation. No statements of operation are available as to earnings during the period 1939 to 1945. According to the last financial statement in 1938 an average profit of 8% on capital was realized, and it is estimated by claimant that it is reasonable to assume that the profits during the war were at least 5% on capital, and that on this basis Mirotan's proportionate share should amount to the said sum of \$476,539.00.

Mr. Lewin is a gentleman of means and became interested in discovery and exploitation of mines and minerals particularly in Northern Quebec, and became a member of several syndicates and companies. One of these was Quebec Iron & Titanium Co. Limited. In this company which is also a holding company, he acquired a sixty per cent interest, namely 953,750 shares. Of these shares in April 1945, Lewin transferred 600,000 or 40% of the share capital to the claimant company, Mirotan Investment Company Limited and retained for himself 353,750, or about 20%, the balance of the shares being held by several others.

Titanic in turn held the controlling interest in several other companies or syndicates, one of which it is alleged, is engaged in active trading operations within the meaning of the Rules of the Commission.

The governing provision found at page 29 of the Advisory Commissioner's Report reads as follows:

"It may be added that among the corporations excluded by the application of the suggested tests would be investment companies, whether non-resident owned or not, personal corporations which carry on no trading activities either themselves or through wholly owned or controlled subsidiaries, foreign business corporations, and non-resident corporations, these terms all being used in the sense in which they are used in the *Income Tax Act*. The shareholders in such corporations who were Canadians at the time of loss may have valid claims even if their ownership interests in the property lost are indirectly held by them through such corporations, the shareholders having, and the corporations not having, the status of Canadians."

The question therefore arises as to whether claimant company Mirotan, with 40% ownership of the shares, can be considered as controlling Titanic, a holding company, in turn controlling another engaged in active trading.

Elaborate arguments have been submitted by Mr. Claude S. Richardson, Q.C., to the effect firstly, that even with only 40% the probabilities are that

Mirotan could be able to exercise at least practical control; and, secondly, that Lewin being in control of Mirotan absolute reliance could be expected from him to vote in any crisis arising in Titanic, in favor of Mirotan, and in this way control Titanic. So long as Lewin held these shares I have no hesitation in agreeing with this argument.

It is contended that "controlled" as used in the rules should mean not only absolute control, but also effective control, though owning only a minority of the shares, that is, less than 51%.

It is well settled law that words should be interpreted in their ordinary natural meaning, and in my view control means just what it says, that is, in any eventuality there must be absolute control without dependence upon any other shareholder. It also seems to me that if "effective control" was intended, that expression would have been used.

Considering the above second submission, suppose for instance Lewin died, or for some reason sold his shares, to others in no way interested in Mirotan, and perhaps joining with the shareholders of the remaining 40%, it seems to me that it could hardly be said Mirotan controlled the corporation.

It is not contended that Lewin held his 20% in trust for Mirotan, or that Mirotan could in any way control Lewin shares.

The expression "wholly owned or controlled" in my view should be interpreted as meaning, that even if one does not wholly own a subsidiary it has at least a majority of the shares, directly or indirectly, and not only a minority depending on the possible support of other shareholders to make up the difference.

It is also well settled law that a shareholder is distinct from the company, and vice-versa. As I understand the situation, when Lewin transferred the shares in Titanic, amounting to 40% of share capital, he nevertheless retained the remaining 20% for himself, and not as agent or trustee for Mirotan. At any rate if for any reason Lewin was eliminated from the company, it is clear that Mirotan would certainly be left without control of Titanic.

I have examined a number of decisions in the courts, and can find none in which "effective or practiced control" as contended for by Mr. Richardson is dealt with. There are instances where a company held minority shares but which controlled another company whose shares combined with those of the parent company amount to over 50%.

In *Purdon vs Doherty*, (1929) 3 D.L.R. 719, I quote from the decision of *Smith, J.* in the Supreme Court of Canada as follows:

"As used in the agreement control means not a temporary and uncertain control of affairs of the company which control cannot be obtained except by ownership of a majority of the companies shares."

See also *Vancouver Towing Co. vs the Minister of National Revenue*, (1946) Ex. Ct. 623; 13 *Modern Law Review*, 1950; and 5 *Modern Law Review*, 1941-43, p. 148.

Another feature of the case strikes me as being possibly of some importance; that is, should the control of a subsidiary be direct or indirect. Here assuming Mirotan controlled Titanic, a non-trading company, but controlling a third company, and suppose the third company was a personal or holding one but controlled a fourth trading company; can Mirotan control be extended in that manner to an unlimited extent? While I think not, in view of the conclusion I have reached it is unnecessary to decide the point.

I think I should say that Mr. Richardson did an amazing amount of work and left no stone unturned to establish the claim and it is with some regret I am unable to reach a favorable decision. Consequently I feel bound to the conclusion that the claim should be disallowed.

December 5th, 1958.

On the 5th day of December 1958, I recommended disallowance of the claim of the said Company for the reasons stated therein, but I did not dispose of the personal claim of Mr. Lewin who indirectly through Mirotan owned 4% of the capital stock of the Polish corporation Slaskie Zaklody.

Mr. Lewin was naturalized in Canada on the 18th day of October 1944 and claims his proportionate share of the benefits of said Polish Company from the date of his naturalization until the end of the war, being the owner of all the shares in Mirotan (except 10 being director's shares) which in turn owned 3940 shares or about 4% in the Polish Company.

The balance sheet of the Polish Company for 1938, which is the last year for which such balance sheets are available, shows that the net profit of the Company was 2,760,363.80 Zl. and a dividend was declared of 2,500,000 Zl. which latter at the then exchange rate of 1939, namely .188,675 to the dollar, equals \$470,000.

It is also alleged on fairly reliable evidence that the Company made an average profit of 8% over several years prior to 1938.

Assuming a profit of 5% the 4% share of Mr. Lewin for 6 months would amount to in round figures, 50,000 Zl. or about \$9,400 at the 1939 rate of exchange.

There is no doubt but that profits of the Company were used for the benefit of the German Reich and transferred to its account resulting in loss to the various shareholders including Mirotan Investments Ltd. in which Mr. Lewin was the owner less 10 shares as above mentioned.

The applicable provision is article 4 at page 63 of the Advisory Commission Report which is as follows:

"Claims for interest and dividends on investments alleged to have been discontinued by reason of destruction or the sequestration of or damage to property, these should be disallowed for the reasons given in 1, 2, and 3. If, however, interest and dividends have been collected by the enemy authorities and not returned to the Canadian who otherwise would have received them, they could form a proper basis for a good money claim."

Although for the reasons given in my former report the Company itself was not eligible to recover compensation, I see no good reason why the individual owner of the shares should not be entitled.

If I am right in this then the said Michael Lewin is entitled to his share of the profits of the Polish Company for the period from the 18 October 1944 until the 8th May 1945.

The value of the Zloty as of 1949 (which is the date for valuation required by the Rules) is the sum of \$136.81, to which I think Mr. Lewin should be entitled.

It has been further submitted that in Poland following the German invasion the R.M. was substituted for the Zloty. Whether or not that is so I cannot see that it makes any difference so far as the amount of profits is concerned whether R.M. or Zloty.

It is also submitted that as Mr. Lewin came to Canada in 1940 and contributed much to the development of mining in the province of Quebec that

he should be regarded as a Canadian prior to 1944 when he became naturalized. This argument has been considered in other cases but always decided under the rules as having no validity. The only method of obtaining naturalization is clearly established by the various Canadian statutes. In Mr. Lewin's case he obtained citizenship under said statutes in October 1944, and not formerly.

I would therefore recommend an award in favour of Mr. Lewin in the sum of \$136.81 together with simple interest at the rate of 3% per annum from the 1st January 1946.

I am satisfied no compensation has been received from any other source.

June 4th, 1959.

(Sgd) J. D. HYNDMAN
Deputy War Claims Commissioner

CASE No. 9725

This claim was originally heard before Deputy Commissioner Hyndman as a claim by Mirotan Investments Limited for loss of earnings in a large Polish electric company.

The learned Deputy Commissioner submitted to me his findings and recommendation, dated 15th December 1958, for the disallowance of the claim on the ground that the corporate claimant had not established its eligibility as a Canadian within the meaning of the War Claims Rules.

The claimant was furnished with a copy of the Deputy Commissioner's report and, on review, its Counsel, Mr. Richardson, submitted to me a series of written arguments supplemented by an oral presentation at Ottawa. Mr. Richardson continued to stress the argument that the Mirotan Company was virtually in control of "Titanic" by reason of the combination of its own 40% of the Titanic stock with the 20% retained by Mr. Lewin.

After a very careful consideration of these, and other, arguments submitted by Mr. Richardson, I found myself entirely in agreement with the conclusion of the learned Deputy Commissioner. His report so clearly and adequately sets forth the relevant facts and inferences that I need add nothing beyond saying that it would, in my opinion, be incongruous to accept as establishing Canadian national status the combination of shares owned by the Mirotan Company with those owned by an individual (Mr. Lewin) who up to 10th October 1944 was not himself a Canadian national.

Having reached the conclusion that the claim of Mirotan Investments Limited must be disallowed as such, I referred the case back to Deputy Commissioner Hyndman to consider whether Mr. Michael Lewin, as a shareholder, might be eligible and entitled to present a claim for his portion of the alleged loss which occurred after his naturalization in Canada on 10th October 1944. The learned Deputy Commissioner re-heard the claim from that angle and later submitted to me his report dated 4th June 1959 in which he recommended an award in favour of Mr. Lewin in the sum of \$136.81, together with interest.

The claimant was duly furnished with a copy of the latter report, but has submitted no further materials on review beyond intimating that he declines to accept the award as he believes that a substantially higher award should have been granted to Mirotan Investments Limited or in the alternative to him.

I have again carefully reviewed the Deputy Commissioner's latter report and approve his recommendation without variation.

I accordingly recommend that the claimant Michael Lewin be paid \$136.81 as his share of losses of property in Poland, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum.

I recommend that the claim of Mirotan Investments Limited be disallowed.

Dated this 15th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9726

Re: Boome

Pursuant to the provisions of Rule of Procedure No. 46, this claimant waived his right to a hearing by Deputy Commissioner, and elected that the Chief Commissioner should proceed to hear and dispose of his claims in the first instance.

The claimant accordingly appeared before me and gave oral evidence on two occasions at Truro, and adduced further evidence of other witnesses at Ottawa. He also submitted a very large number of documents bearing on various aspects of his claims. In fact, as the principal claims arose in Eastern Germany, I am of the opinion that the claims have been as fully documented and presented as the difficulties in the way of obtaining evidence would permit.

I may also state that the claimant impressed me as being a man of high integrity and as a witness whose evidence is entitled to the greatest credibility.

The claimant apparently enlisted in the Princess Louise Fusiliers in March 1943 and was discharged in August 1944. His service, however, was in a reserve unit, and he therefore could not qualify as a Canadian by reason of enlistment in the armed forces of Canada for active service, as provided by the War Claims Rules—Report of Advisory Commission, page 24. His eligibility must therefore date from his naturalization in Canada on 17th January 1945, since which date he has at all times been a Canadian national. The requirement of national status as a qualification for eligibility necessarily excludes his right to compensation for (a) loss of machinery at Hamburg on 15th October 1943; (b) loss of household furniture and effects in Berlin in November 1943; and (c) destruction of trunks containing personal belongings in Berlin on 31st January 1944.

The claim for requisition of a motor car in May of 1945 by the Russian army of occupation must also clearly be disallowed, as there is no evidence that this loss did not occur after the official termination of World War 2.

The claim for loss of industrial shares on deposit at the Deutsche Bank in Berlin must also be disallowed owing to the absence of evidence regarding the identity and ownership of such shares and the cause and date of the alleged loss.

There remain for consideration the very substantial losses apparently suffered by the claimant in respect of the substantial destruction of property at his manor known as "Haus Hohenwalde" and at the factory of the firm known as "Tuchfabrik Gustav Samson" at Cottbus.

The Manor property was situated near Landsberg, in what was formerly Germany but is now Poland, and was an old feudal estate about two and a half miles in length, with a very valuable manor house, workers' dwellings, farm buildings, stock and equipment. The evidence indicates that the manor house and a number of the workers' dwellings, the sheep stable and a large quantity

of machinery were destroyed, apparently as a result of fire set by the Russians. The claimant estimates the loss of these items at RM 400,000. It has not been possible to fix an authentic date for the damage to this property, but even if it could be established with certainty that the destruction occurred after the claimant acquired Canadian national status, his claim must be rejected for the following reason.

At some time in 1938, the German authorities conducted a forced sale of the Hohenwalde property at a price of RM 1,250,000. After paying mortgages on the manor property, they deposited a balance of RM 798,000 in the Deutsche Bank, apparently as payment on, or collateral to, a mortgage held by the Bank on the claimant's Cottbus factory. It is therefore clear that as early as in 1938, the established Government of Germany had divested the claimant of his legal and equitable ownership in the Hohenwalde manor, and that consequently he was not the owner at the time when the destruction by operations of war occurred. Any loss which he may have sustained by reason of the forced sale took place at a time when he was not a Canadian national and, as a matter of fact, before the outbreak of World War 2. I have, therefore, no alternative but to recommend disallowance of this branch of the claims.

As to the Cottbus factory claim, the problem is much more difficult and complicated. That property was located in what is now East Germany. The claimant testifies that he was the sole owner of the factory property belonging to the firm known as Tuchfabrik Gustav Samson, having acquired it from his father, the late Alfred Bum. Unfortunately the claimant has been unable to produce a copy of his father's Will. There are, however, on file numerous documents, including extracts from the Commercial Register of the County Court in Cottbus and the Register of Companies of the same Court, which indicate that Dr. Martin Bum (the claimant's name when he lived in Germany) was the sole owner of the factory, although his mother, Mrs. Martha Bum and his sister, Mrs. Nelly Traxler, appeared to have retained some form of sleeping partnership. The claimant testifies that the interests of his mother and sister did not amount to any share in the ownership of the property, and this is supported by admissions of his sister, but the available documents do not altogether clarify the situation. The documentary evidence, nevertheless, is sufficient to establish that the claimant owned a very substantial interest, and perhaps the sole legal and beneficial interest, in the assets comprised by the Cottbus factory property. The documentary and oral evidence also establish that the factory was well equipped and had a very considerable monetary value before the outbreak of World War 2. On January 31, 1939, an estimate of the value was made by one Curt Wenzel, who computed his estimate under three headings: time value—RM 1,696,300; book value—RM 468,800; sale value—RM 818,000. The claimant contends that the sale value given by Wenzel was a conservative valuation of the property.

There is further evidence that on 15th February 1945 the factory property was almost completely destroyed by bombing, the damage being estimated at 88.7%.

I have, therefore, no difficulty in concluding that the claimant was the pre-war owner of a very substantial, if not sole, legal and beneficial interest in the Cottbus factory property, and that the property suffered severe damage by reason of operations of war on or about 15th February 1945.

The really difficult question to determine is whether the claimant continued to be the owner of the property up to the time of the war damage, or whether his ownership had previously been divested by process of law initiated by the German authorities. The claimant, himself, is not a Jew, but apparently the Nazis discovered that there was some Jewish factor in his ancestry, and on

that pretext they subjected his property to at least some degree of the anti-Jewish measures which were being carried out at the time. As I noted in the case of *Herman Zimmer*—No. 9925, the confiscations of property belonging to persons of Jewish race or ancestry were carried out in Germany by a variety of methods and often by a series of steps. In that case I held that the confiscation of Hermann Zimmer's property in Koenigsberge was never consummated, but that he continued to be the owner, and to be recognized as such, until the total destruction of his building in 1944. Similarly, in the cases of *Paul Heller*—No. 9314, *Samuel Heller*—No. 9315, and *Hans Krohn*—No. 10160, it was held that the properties concerned had not been confiscated so as to divest the claimants of their ownership before the time of the war damage.

In the present case, there is evidence that in 1938 or 1939, Dr. Gustav Schiermeyer was appointed as a trustee of the Cottbuser Tuchfabrik formally known as Tuchfabrik Gustav Samson, with the apparent purpose of having the firm liquidated and the property sold. The claimant was notified that he had lost the right to make "dispositions concerning the property values, and that the trustee had been appointed as administrator for them". There are, however, documents in evidence which indicate that the attempts to sell the factory property and to liquidate the company were not successful, but that the claimant continued to be recognized as the beneficial owner at least until some time in 1943. There is also evidence to the effect that the Cottbus factory property was declared to be public property by the post-war administration in East Germany. If the property had been sold, or confiscated outright, by the Nazi authorities prior to, or during, World War 2, such a post-war declaration would not have been necessary. Although the exact legal situation is far from clear, the evidence appears to me to point to the inference that, although the property was placed under the administration of a trustee, it was never sold or confiscated during the war years, but that the claimant continued to be the beneficial owner of his interest in the property throughout the period of the war, including the time of its destruction by war operations.

The quantum of compensable damage is also an extremely difficult problem, and in order to resolve it I am obliged to place myself in the position of a Jury. After taking into account all the gaps and uncertainties appearing in the evidence, I would assess the claimant's established loss by war operations in respect of the Cottbus property at \$32,000. I am conscious that the loss sustained by the claimant may have been very much greater than the estimate which I have reached. A great deal of the evidence is, however, incomplete and indirect. There is considerable uncertainty as to the nature of the interest of the claimant's mother and sister in the firm, as to the probable drastic depreciation of the property which inevitably took place during the war years, as to the balance (if any) due on the mortgage, and as to the actual extent of damage by bombing. I am therefore unable to conclude that the evidence, as a whole, would warrant a greater award than that which I have suggested.

As to costs, I am of the opinion that the sum of \$420.00 would reasonably reimburse the claimant for expenses incurred abroad in the preparation of the portion of his claims which had succeeded.

I therefore recommend that the claimant be paid:

- (a) \$32,000 as an award for loss of property in East Germany, such payment to be in Orders of Priority Nos. 3(a) to 6(a), inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

- (b) \$420.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim.

Dated this 29th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 27(IT)9729

Re: Borrelli

...In each of the items in the foregoing table where the claimant is shown to be owner of one-half of a property the documents of title show his wife Domenica di Raddo Borrelli to be the owner of the other half of the property. The record shows that when the claimant was naturalized in Canada in August, 1927, his wife also became a British subject. However she did not come to Canada at any time, nor has she ever acquired Canadian status or citizenship. She has therefore no claim in respect of her interests in the damaged properties of which this Commission could take cognizance. I am informed that she filed a claim with the Italian Government in respect of the damages sustained by these properties and received from that Government, as compensation for the damages, various sums amounting in all to 267,420 lire. I must assume that such compensation was awarded to her in respect of her own interests in the damaged properties, and I would recommend that the payments that she has received on this account be not taken into consideration when the award of the claimant is being determined and that they be not deducted from that award.

I find, therefore, that the several properties in Italy in which the claimant had whole or part ownership were damaged by war operations to the extent of 3,698,463 lire valued as of October 27, 1952, of which the share of the claimant amounts to 2,424,654 lire, and that he is eligible to be compensated in respect of his losses under the *War Claims (Italy) Settlement Regulations*. In accordance with the terms of the Treaty of Peace with Italy he is entitled to an award of compensation of two-thirds of this amount of 2,424,654 lire, and my recommendation is that he be granted an award of compensation in the sum of 1,616,436 lire valued as of October 27, 1952. From this award of 1,616,436 lire there should be deducted the interim award of 200,000 lire paid to him on account of his claim on or about July 29, 1955.

The claimant did not submit a statement of the costs incurred by him in Italy in establishing his claim but it has been observed that the documentation herein and the number of properties damaged are well above those of the average claim. In the circumstances, I would recommend that this claimant be allowed 50,000 lire, valued as of October 27, 1952, in respect of costs. In accordance with the terms of the Treaty of Peace with Italy the award in respect of costs should be paid in full.

Consideration will in due course be given in accordance with the War Claims Rules to the claim of this claimant for the balance of the total amount of compensation for which he may be eligible under those Rules and for which no provision is made in this report.

March 15, 1956.

JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: Awards approved by Advisory Commissioner; (Interim) 15th July 1955 and (Final) 22nd November 1956.

CASE No. 9739

Re: Stevens

Deputy Commissioner Bird has submitted to me his findings and recommendation for the disallowance of this claim, with his reasons therefor. The claimant's solicitors have been furnished with a copy of the Deputy Commissioner's report.

On review, the claimant's Counsel submitted an extensive written argument, which was later supplemented by an oral presentation before me at Ottawa. The claimant was represented by Mr. A. S. Pattillo, Q.C. of Toronto, with whom were associated Mr. H. P. Legge of the "Lawson" firm in Vancouver, and Mr. George H. Bryant also of Vancouver.

The claim is for compensation for the total or partial destruction of a greenhouse and an apartment house in Vienna, in both of which the claimant alleges that she had a one-quarter interest. As the greenhouse was destroyed on 10th September 1944, one day previous to the claimant's naturalization in Canada, she is obviously not eligible to claim for that loss.

As to the apartment house, her Counsel contends that its forced sale, under duress and with no regard to the actual value of the property, was invalid according to Austrian law, and that the true ownership remained in the claimant until the time of damage by operations of war.

Counsel particularly stresses the contention that throughout the National Socialist regime in Austria the Austrian General Civil Code remained in full force and effect and that by paragraph 879(4) a sale under duress for a consideration substantially disproportionate to the value of the property is null and void.

Subsequently to the hearing, Mr. Bryant very kindly obtained for me a copy of the decision rendered by the Supreme Court of Austria on 9th November 1946, on which Counsel for the claimant relies as establishing the nullity of the forced sale by reason of paragraph 879(4). The actual decision in the case cited was under paragraph 875, and was to the effect that the plaintiff could not secure redress under that section, and the judgment went on to express the opinion that a general duress makes the resulting contract null and void only if the prerequisites of paragraph 879(4) can be met. The latter expression of opinion is, of course, *obiter dictum*, and is subjunctive rather than indicative in its form. The judgment later states that transactions like the one in the subject case undoubtedly fall under the Federal law of May 15, 1946, under which transactions, whether for a consideration, or without consideration, made during the German occupation of Austria are null and void if they were performed in the course of the political or economical penetration of Austria by the German Reich in order to deprive natural or juridical persons of property which they owned on March 13, 1938. The Court was of the opinion that the Legislature had thus clearly expressed the view that it did not consider the provisions of the Austrian General Civil Code sufficient to give effect to claims for restitution such as the one in the subject case. Despite the subjunctive dictum of the Court, it is not improbable that a similar opinion as to the view of the Legislature might have been reached in a case prosecuted under paragraph 879(4).

Admittedly, the provisions of the Austrian General Civil Code remained in force throughout the National Socialist regime. It would, however, appear that the general provisions of the Code such as paragraphs 875 and 879(4) were valid subject to the more specific provisions of the confiscatory measures indicated and carried into effect by the Nazi authorities.

After very careful consideration of the circumstances of this case, in the light of the arguments and authorities submitted by Counsel, I agree with the

conclusion of the learned Deputy Commissioner that the claimant had been divested of ownership of the apartment property before the date at which she became a Canadian national and before the time at which the property suffered damage by operations of war. Disposition of the case must therefore follow the principles enunciated by the learned Deputy Commissioner as having been reached pursuant to the meetings of Deputy Commissioners in February 1958. There seems to be, in equity, no valid distinction between a forced sale effected to avoid inevitable confiscation, and an actual confiscation carried out by reason of the failure of the owner to concur in the forced sale.

The determination of this claim must therefore follow the long list of cases in which confiscation by the Nazis in Austria was held to divest the owners of their property, and I may mention particularly the cases of *Arthur* and *Paul Lourie*—Nos. 9890 and 9891, in which the issue concerned the validity of sale under duress.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that this claim be disallowed.

Dated this 30th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9740

Re: Woodcot Estates Limited

This is the last, and one of the most complicated and difficult, of the cases coming before me for review under the War Claims Rules.

Deputy Commissioner Bird, to whom the case was referred for hearing, has submitted to me his findings and recommendations, with his reasons therefor. Counsel for the claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified Counsel, after a preliminary review, that I might consider it necessary to reverse the Deputy Commissioner's affirmative recommendations, and disallow the various branches of the claims for some, or other, of the reasons set forth in the Notice.

On review, the claimant's counsel submitted an extensive written argument, which was later supplemented by an oral presentation before me at Ottawa. The claimant was represented by Mr. A. S. Pattillo, Q.C. of Toronto, with whom were associated Mr. H. P. Legg of the "Lawson" firm in Vancouver, and Mr. George H. Bryant also of Vancouver.

Counsel for the claimant argued that the awards recommended by the Deputy Commissioner should be maintained, and that the Deputy Commissioner's disallowance of the branches of the claims numbered (2), (3), and (5) on the first page of his report should be reversed and awards recommended.

Counsel stressed the distinction between the last-mentioned branches of the claims and the situation obtaining in branch No. (4). All those four branches of the claims were for damage to buildings in the City of Vienna. But the property involved in branch No. (4) had been previously confiscated outright by virtue of National Socialist legislation, whereas the properties involved in branches (2), (3), and (5) had been alienated by forced sale pursuant to that legislation.

Counsel for the claimant admit that branch No. (4) of the claims was properly disallowed by the Deputy Commissioner, following the principle laid down in Case No. 1486—*Whitehead*. They contend, however, that the forced

sales or alienations of the properties involved in the other three branches were void *ab initio* by reason of the continued operation of paragraph 879(4) of the Austrian General Civil Code.

I have already given full consideration to this argument in the case of *Stevens*—No. 9739, and I feel bound to follow the conclusion reached by the Deputy Commissioner and by myself in that case, as well as in the cases of *Paul* and *Arthur Lourie*—No. 9890, and No. 9891.

Apart from the foregoing reasons, since all claims resulting from the ownership of any assets or property in Austria by members of the Pick Family were allegedly transferred to the present claimant by the so-called "Seattle Agreement" of 29th January 1940, my subsequent remarks on the effect of that agreement will apply also to branches (2) to (5).

The branch of the claims numbered (1) on the Deputy Commissioner's first page presents numerous and complicated problems. I had at first considerable difficulty in reaching a conclusion as to the eligibility of the claimant on the basis of its Canadian national status. If the requirements for an incorporated company recommended by the Right Honourable Advisory Commissioner had been maintained, the corporate claimant would obviously not have been a Canadian at the time of the alleged losses, as the prescribed minimum of its capital was not then owned by Canadians. That particular requirement was, however, eliminated by Section 1(b) of the Schedule to the War Claims Regulations, and only the tests as to residence and trading were retained for the purpose of determining whether a corporation was a Canadian at any relevant time.

My preliminary examination of the evidence led me to some doubt as to whether the claimant would qualify under the "trading" test or not, as it was not clear that its trading activities in Canada extended to the primary, or even to a substantial, objective of the company. Further examination of this aspect of the case, however, in the light of additional references furnished by counsel on review, has convinced me that from May or June 1942 until after 23rd October 1952 the claimant was genuinely engaged in trading activities in Canada through such controlled subsidiaries as Eburne Sawmills Limited. I have therefore now no hesitation in accepting the learned Deputy Commissioner's finding that the claimant as a corporation was at all relevant times eligible to present a claim.

As to branch numbered (1) on the first page of the Deputy Commissioner's report, the learned Deputy Commissioner very clearly summarizes the transactions involved in the successive transfers of the Pick interest in the firm popularly known as "Pick & Co.", namely: (a) the 1936 transfer of a 53% interest to Invag & Schilizzi; (b) the 1938 transfer of the remaining 47% to Walek & Co.; (c) the 29th January 1940 transfer to the claimant at Seattle of the allegedly continuing 100% beneficial interest.

Counsel for the claimant contends that the 1936 and 1938 transfers were merely protective measures, "in trust" for the transferor, as security against impending national and international disaster. They therefore argue that the total beneficial interest continued to be vested in Pick but that it was effectively transferred, without any remaining equity, to the claimant in 1940.

An overall view of the claimant's contention is met by the difficulty that it argues against the validity of forced sales in Austria on the ground of inadequacy of consideration, whereas it supports the contention that the transfer to the claimant was outright both in law and in equity, although the consideration represented only a small fraction of the values of the properties involved.

As to the contention that the 1938 transfer to Walek & Co. was made in trust for the transferor, I encounter very little difficulty. It is, of course, to be

admitted that the Austrian law of property permitted the existence of trusts in a manner analogous to that of English law. There is, however, in my opinion, no evidence which would adequately support the contention that the Walek Co. was merely a trustee for Pick. There is no contemporary document, such as is normally required to establish a trust, although such a document or declaration respecting such an important transaction might readily have been lodged in a neutral country, or in the country of the Pick family's Canadian adoption. Obviously, documents and declarations made after the situation had changed by reason of wartime damage and the termination of hostilities have not the same value in evidence of a trust as would a contemporary document, or at least one prepared and executed before the losses had occurred. The evidence rather indicates that the equities upon which the Walek Company became the legal transferee of the property were to depend upon subsequent events. This is confirmed by the fact that after the war one of the surviving sons of the late Mr. Walek Sr. came to Vancouver (in 1947) and had a conversation with one or more members of the Pick family, and a "Restitution Agreement" was made whereby the Waleks were to retain 40% of the whole of the original stock, including the part transferred to Invag & Schilizzi in 1936.

In the meantime, with the assistance of a State Reconstruction Programme, the Waleks had partly rebuilt the mill and resumed operations. It is alleged that the 40% beneficial ownership retained by the Waleks was remuneration for the services which they had rendered to the Pick interests. According to Mr. Bryant's submission, at the time of the Restitution Agreement of 1947 the Waleks already had 46.83% of the total shares in Pick & Co.; all they actually restored to Pick by the 1947 agreement was therefore 6.83%, and that could hardly be regarded as impressive evidence of a total beneficial trust in favour of Pick. As such an arrangement or settlement was clearly not anticipated at the times when the losses by operations of war occurred, I am forced to conclude that at those times there was, so far as the Walek transfer was concerned, no valid trust subsisting in favour of Pick.

The evidence supporting the claimant's contention of a trust in favour of Pick covering the beneficial ownership of the interest transferred to Invag & Schilizzi in 1936 is perhaps stronger than in the case of the Walek transfer. In view, however, of the opinion which I have reached as to the Seattle Agreement, it is not necessary for me to reach any definite conclusion on this point.

The expressed consideration for which transfer of the Pick family's properties to the claimant company was made was \$200,000., to be paid back by the allotment of 1,997 shares of the company's capital. On the other hand, the values claimed in the Custodian's Office for the Austrian properties so transferred were computed (on the basis of an affidavit sworn to by Mr. L. L. G. Bentley on 19th January 1946) as follows: (the branch numbers referred to being those appearing on the first page of the Deputy Commissioner's report):

Branch No. 1	Pick & Co.	\$ 1,657,000
2	Apartment	221,000
3	Apartment	165,000
4	$\frac{1}{4}$ interest apartment	13,750
5	$\frac{1}{4}$ interest greenhouse	50,000
6	Antiques and objets d'art	110,000
		<hr/>
		\$ 2,216,750
		<hr/>

In addition to the Austrian assets, the Seattle transfer included all claims arising from ownership of assets or property in Czechoslovakia. The magnitude of the value of that property may be gathered from the fact that the damage

caused by dismantling of spindles in one plant alone was estimated at \$3,360,-000. The Seattle transfer also included a number of other assets in Austria, Czechoslovakia, Roumania, and France.

It will therefore be seen, to paraphrase the language of Counsel for the claimant, that the nominal consideration of \$200,000. bears no relationship to the actual values of the properties alleged to have been transferred to the claimant. It is to be inferred from the materials before the Commission that the primary object of the Seattle transfer was to avoid Succession Duties.

It is pertinent to note that at the time of the 1947 Restitution Agreement, Walek dealt with the Pick family individually, and no mention whatever was made of the Woodcot Company, although it is now alleged to have been the owner of the interests concerned at that time. It is also pertinent to note that when Mrs. Pick and Mr. Prentice applied to the Austrian Restitution Court and regained title of properties here alleged to have been transferred outright to the claimant, they applied as individuals and the Woodcot Company did not apply or take any part in the application. The reasons alleged by Counsel for the nonappearance of the present claimant in the restitution proceedings are highly technical and, in my opinion, inadequate. The real reason would appear to be that Austrian law would not recognize the claimant as having been the beneficial owner of the properties involved at the time of the war damage. It is also to be noted that although Mrs. Pick and Mr. Prentice regained the title in Austria to the properties involved in branches (2), (3), and (5), the title to those properties has not since been vested in Woodcot Estates Limited, although that company here claims to have been the legal and beneficial owner. Unquestionably, if the situation as to eligibility under the War Claims Rules had been reversed, i.e. if Woodcot Estates Limited had been ineligible to claim and the individual members of the Pick family had been eligible, this Commission would have been confronted with the registered and recognized Austrian title to the properties, and the unregistered ownership alleged to have been conferred by the Seattle Agreement would not have been presented.

After very careful consideration, I am convinced that the transfer to Woodcot Estates Limited effected by the Seattle Agreement of 1940 was made for a limited purpose or purposes, and was not effective to vest in the present claimant the beneficial ownership under Austrian law of the properties involved. The claimant was therefore not the owner of the properties at the time of damage by operations of war, as required by the provisions of the War Claims Rules, and its claims must therefore be disallowed.

There is a suggested possibility that some of the items of household furniture and objets d'art covered by branch numbered (6) on the first stage of the Deputy Commissioner's report may have been looted within the period elapsing between the naturalization of Mr. Otto Pick on 13th March 1945 and of Mrs. Pick on 24th March 1945 respectively and the termination of hostilities on 8th May 1945. However, such a conclusion would be highly speculative, particularly in view of the fact that the apartment building and contents appear to have been confiscated outright by the Austrian State in May 1939 and occupied by the Nazi Ministry of Propaganda in the interval. Unlike the situation in cases arising in Czechoslovakia, confiscation by the Nazi Government in Austria would be an act of the *de facto* government of the country, and therefore would be legally valid. In all the circumstances, I am unable to conclude with any reasonable degree of certainty that any part of the loss on this branch of the claims occurred after the naturalization of Otto Pick or his wife.

On review, counsel for the claimant has submitted materials in support of a claim for losses in Czechoslovakia. The evidence indicates that the Pick interests suffered very considerable loss in Czechoslovakia by reason of the dismantling of the spindles and other machinery in one of their plants there,

and by reason of the consequent loss of profits. The learned Deputy Commissioner does not formally refer to this branch of the claims in his report. He has intimated that the reason for this absence of reference was that the Czechoslovakian claim was not pressed in the course of the hearings before him. Nor is there any reference to the Czechoslovakian branch in Form "H" of the Statement of Claim as required by the Commission's Rules of Procedure.

Loss of profits is obviously not compensable under the War Claims Rules and the dismantling of the spindles and machinery evidently took place at an early date in the war, if not partly before its commencement. For the reasons mentioned earlier in this report, Woodcot Estates Limited would not be able to claim compensation for such damage, even if it had occurred after the claimant became a Canadian corporation by the commencement of trading activities about May 1942. Nor would the members of the Pick family, who were not Canadians at the time of that loss, be eligible to claim.

There is a submission that the "slave labour" inmates, who were quartered in the plants, committed acts of looting and vandalism when they were liberated by the Russians at the close of World War II. Though the evidence on this point is vague and the extent of the damage so caused is extremely difficult to estimate with arithmetical accuracy, I am prepared to infer from all the attendant circumstances that such losses did in fact occur in late April or early May 1945. It becomes necessary to determine the ownership of the damaged property at the time of these particular losses.

The evidence is to the effect that from 1926 the late Otto Pick was the sole proprietor and owner of the firm of E. G. Pick, Macospinnereien, Zwirnerei und Cordfabrik (popularly referred to as "E. G. Pick"), which operated cotton spinning mills, doubling mills, and a tire cord manufacturing plant at Oberleutensdorf in the Sudetan area of Czechoslovakia. In June 1938 Otto Pick, in view of the obvious danger of occupation by Hitler, entered into an agreement with the Cotton Spinning and Doubling Company (Oberleutensdorf) Limited, a United Kingdom company, whereby the firm of E. G. Pick transferred all its assets to the United Kingdom company, and Otto Pick became the beneficial owner of all the shares of the United Kingdom company. This arrangement is said to have been entered into in the hope that the property, if ostensibly owned by a United Kingdom company, might be more immune from seizure in the event of a threatened annexation by Hitler of the Sudetan area.

Subsequently, on 29th January 1940, by the Seattle Agreement, Otto Pick purported to transfer to the present claimant, Woodcot Estates Limited, all his claims as sole proprietor of "E. G. Pick", including all the issued capital of the United Kingdom company to which I have referred. For reasons analogous to those which I have set forth in connection with the transfer of the Austrian assets of the Pick family to Woodcot Estates Limited, I must regard the transfer of Otto Pick's Czechoslovakian assets to Woodcot as having been made for a limited purpose and as therefore not having the effect of vesting the beneficial ownership of those assets in the present claimant according to the law of Czechoslovakia.

It is unnecessary to decide whether, or not, the transfer of Mr. Pick's Czechoslovakian assets to the United Kingdom company was an effective transfer of beneficial ownership. If, on the one hand, it was not such an effective transfer, then Mr. Pick continued to be the sole beneficial owner of the Czechoslovakian property. If, on the other hand, the transfer was an effective conveyance of beneficial ownership, Mr. Pick continued to be indirectly entitled by reason of his sole ownership of the shares of the United Kingdom company. In either case, Mr. Otto Pick would be eligible to claim for any loss or damage caused by acts of warfare occurring after the date on which he acquired Canadian national status, namely 13th March 1945.

As previously intimated, I am reasonably convinced that such losses did in fact occur in late April or early May 1945 and, placing myself in the position of a jury, I would assess their amount at \$20,000., and I would recommend reimbursement in the sum of \$600.00 for expenses necessarily incurred abroad in the preparation of this branch of the claims.

Though no claim was formally presented to this Commission on behalf of Mr. Otto Pick or of his Estate, I am of the opinion that the claim presented by Woodcot Estates Limited should be regarded as having been made on behalf of all persons eligible to receive an award in respect of the losses concerned. Unfortunately, Mr. Otto Pick departed this life in 1950. His death therefore occurred before the date of the appointment of the War Claims Commissioner. In such cases, the War Claims Rules prescribe that the date of the appointment of the Commissioner (23rd October 1952) should be taken as the date of presentation of the claim for adjudication,—Report of Advisory Commission, p. 23. It is accordingly necessary to determine the eligibility (from the point of view of national status) of the beneficiaries of Mr. Pick's will or intestacy before a final recommendation for payment can be made.

By his last will and testament, which was probated in the Supreme Court of British Columbia on 14th August 1950, Mr. Otto Pick appointed his wife Katharina Pick, his daughter Antoinette Ruth Bentley, and his son John Gerald Prentice (formerly Pick) to be his executors, and also named them as sole beneficiaries of his will.

Mrs. Pick, Mrs. Bentley, and Mr. Prentice became naturalized in Canada on 24th March 1945, 15th July 1943, and 29th October 1943, respectively, and were granted Certificates of Naturalization accordingly. As they did not become aliens, they automatically became Canadian citizens on 1st January 1947 by virtue of Section 9(1)(a) of the *Canadian Citizenship Act*. They have each retained their Canadian citizenship up to and after the presentation of the claim, and they are each therefore eligible to receive their respective shares of any recommended award.

I accordingly recommend that there be paid to Mrs. Katharina Pick, Mrs. Antoinette Ruth Bentley, and John Gerald Prentice as Executors of the last will of Otto Pick, deceased, the following sums:

(a) \$20,000.00 as an award for loss of property suffered by the late Otto Pick in Czechoslovakia, such payment to be in orders of Priority Nos. 3(a) to 5 inclusive, and to bear simple interest from 1st January 1945 at 3% per annum;

(b) \$600.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish the claim, such payment to be without interest, but not to be taken into account for priority purposes.

Whether, or not, the provisions of the "Seattle" Agreement are effective to relieve this award of liability to Succession Duty, is not a matter within the purview of this Commission.

In all other respects, I recommend that the remainder of the claims be disallowed, and to that extent I reverse the recommendation of the learned Deputy Commissioner.

Dated this 10th day of December, A.D. 1959.

In order to avoid repetition, this Report should be read as a sequel to the Report of Deputy Commissioner Bird dated 10th July 1959 and my own Report dated 10th December 1959.

Since the date of my last Report, counsel for the claimant has submitted a somewhat elaborate brief setting forth numerous reasons in support of the contention that the claims which I disallowed should be re-opened for further

consideration. I believe that, with one exception, the arguments advanced by learned counsel were fully considered at the time of my previous review of the case, and I am still of the opinion that the points involved were decided in accordance with the spirit and intention of the War Claims Rules.

There is, however, one submission set forth in the appendix to the claimant's recent brief which, for reasons to be outlined, did not receive consideration in the course of my previous review, and which appears to me to possess at least arguable merit. I refer to counsel's intimation, which I shall hereinafter cite as submission (*vii*), to the effect that I "did not consider the claims by John Gerald Prentice and Antoinette Ruth Bentley as individual beneficial owners of one third each of the capital of Pick & Co. although there was clear evidence that Mr. Prentice was a Canadian citizen at the time of three out of the four air raids on the spinning mill, and Mrs. Bentley was a Canadian citizen at the time of all four air raids".

It will first be necessary to determine the propriety of re-opening the case at this stage for the purpose of considering the contention which I have quoted.

As the work of the War Claims Commission progressed towards completion, it became necessary to fix a date after which no submissions would be received in support of pending claims. I accordingly fixed the 21st day of August 1959 as the last day upon which evidence, documents, arguments, or other materials might be received in support of an alleged claim, and I accordingly notified all persons and corporations who had claims then pending.—Rule of Procedure 59(1). Rule 59(2), however, provided for an exemption from the general rule in a case where the Chief Commissioner proposed to revise the Deputy Commissioner's recommendation to the detriment of the claimant. The present case may obviously come within the purview of the exemption.

Counsel now quite properly points out that, as a matter of fact, submission (*vii*) was advanced to Deputy Commissioner Bird on 12th January 1959. As the learned Deputy Commissioner decided the claims on other grounds, and recommended awards to Woodcot Estates Limited on the basis of its corporate entitlement, it was not necessary for him to consider the validity of submission (*vii*), and he therefore made no reference to it in the course of his Report. Nor did counsel for the claimant, in the course of the extensive documentary and oral presentations on review before me, at any time refer to the individual entitlement of Mrs. Bentley and Mr. Prentice mentioned in submission (*vii*), but counsel chose to rely entirely on the corporate claim of Woodcot Estates Limited, as upheld by the learned Deputy Commissioner.

On the record of the Statement of Claim, and throughout the presentation of the case, with the exception of the single submission to Deputy Commissioner Bird to which I have referred, all the claims in this case were presented as claims of the corporation known as Woodcot Estates Limited. I noted, however, in the course of my previous Report my opinion that the claims presented by Woodcot Estates Limited should be regarded as having been made on behalf of all persons eligible to receive awards in respect of the losses concerned. That opinion was expressed in the course of my consideration of losses in Czechoslovakia, for which I recommended a partial award in favour of the estate of the late Otto Pick. My present opinion as to the potential merit of submission (*vii*) is strengthened by the fact that I reached my decision on the somewhat analogous Czechoslovakian claim by independent consideration, and without having had the point of view submitted to me by counsel.

On careful consideration of the background above outlined, I have reached the opinion that it is equitable and proper to re-open this case for the consideration of the view-point proposed by submission (*vii*).

As to eligibility of Mrs. Bentley and Mr. Prentice, I have already found in my previous Report that they became naturalized in Canada on 15th July 1943 and 29th October 1943 respectively, that they were granted certificates of naturalization accordingly, and that they have each retained their Canadian status up to and after the presentation of the claims.

The branch of the claims concerned in this aspect of the case, being the branch numbered (1) on the first page of the Deputy Commissioner's Report, has to do with the destruction of an industrial property at Wiener Neustadt in Austria, which the learned Deputy Commissioner found to have been progressively destroyed by four bombing raids occurring on 13th August and 2nd November 1943 and on 10th and 24th May 1944.

Up to 17th April 1936 the business concerned, to which I shall refer as Pick & Co., had been solely owned by the late Otto Pick, who was the father of Mrs. Bentley and Mr. Prentice (then Hans Pick). On that date a partnership agreement was executed, in which Otto Pick, Mrs. Bentley, and Mr. Prentice became general partners, each participating to the extent of one third in 50% of the total capital of the enterprise. Mrs. Bentley's husband was also shown as a general partner, but he was to participate only in the management and profit, and had no interest in the capital.

By agreement of the same date, and allegedly for the sole purpose of protecting the interests of the Pick family against threats of Nazi confiscation, an additional partnership was formed to include as special partners a Swiss holding company referred to as "Invag", and an Egyptian resident Mr. Steven N. Schilizzi. To the capital of the new partnership, Invag and Schilizzi ostensibly contributed 30% and 20% respectively, but the evidence is to the effect that the capital contributed by those special partners was paid out of moneys advanced to them by Otto Pick, Mrs. Bentley, and Mr. Prentice, in three equal shares. In September 1936, additional capital was required for the enterprise, and a further subscription was made by Invag and Schilizzi, their payment again being made with funds provided by the same members of the Pick family and in the same proportions. As a result of this supplementary agreement on 7th September 1936, the percentage interests ostensibly held by Invag and Schilizzi as special partners were increased to 60% of the total capital. The remaining 40% of the capital continued to be held by Otto Pick, Mrs. Bentley, and Mr. Prentice as general partners.

This situation prevailed until 1938, when the interest of the general partners was transferred to members of a family named Walek, and the firm name of Pick & Co. was changed to Walek & Co. Invag and Schilizzi continued to hold their special partnership interests, but the ostensible participation in the capital was altered in such a way that the special partners appeared as owners of 53.17% of the capital, whereas the Walek family appeared as owners of 46.83%. The agreement for this new arrangement was apparently executed on 31st May 1939.

The ratio of percentage interests as between special partners and general partners seems to have varied from time to time, and to have been dependent in some way on the amount of capital actually in use at any particular time. On 28th April 1948, the percentage held between special partners appears to have risen again to 60%. In a letter dated 28th April 1945, Mr. Otto Pick states that 51% of the capital was being held in trust for himself and his family by Invag and Schilizzi. In his evidence before the Deputy Commissioner, Mr. George H. Bryant states that the percentage held by Invag and Schilizzi was 49%. It would be impossible to determine the exact percentage of interests held by Invag and Schilizzi at the time of the respective bombings of the Wiener Neustadt property, but I think the fluctuation in percentages must be resolved against the claimants. I would therefore find that at the relevant times 49% of

the capital of the Wiener Neustadt enterprise was held by Invag and Schilizzi and the remaining 51% by members of the Walek family.

For the reasons elaborated in my previous Report, I concluded that the evidence did not establish a valid trust subsisting in favour of the Pick family so far as the interests held by the Waleks were concerned. I felt free to comment that the evidence supporting the claimant's contention of such a trust covering the beneficial ownership of the interests transferred to Invag and Schilizzi in 1936 was perhaps stronger than in the case of the Walek transfer, but in view of the opinion which I had formed on other points it was not necessary for me to reach any definite conclusion as to the alleged Invag and Schilizzi trust.

I have now very carefully re-examined the evidence relating to the Invag and Schilizzi participation in Pick & Co. and I am prepared to agree with the learned Deputy Commissioner's conclusion that Invag and Schilizzi held their interests in the partnership in trust for members of the Pick family, namely for Otto Pick, Mrs. Bentley and Mr. Prentice in three equal shares. At the relevant times Mrs. Bentley and Mr. Prentice would therefore have a beneficial interest in the capital and the property of the partnership amounting to one third each of 49%. It is not necessary to consider the share of the late Otto Pick, as he was not a Canadian at the time of any of the air raids which destroyed this property.

As to the quantum of damage, the learned Deputy Commissioner estimated the loss of the spinning mill plant at 2,000,000 RM., and the loss of the spinning mill machinery and equipment at 3,000,000 R.M. As the evidence in support of assessment of damages was substantially based on the opinion of an engineer who made his appraisal on 10th December 1949, it is extremely difficult to relate that and subsequent appraisals either to the actual loss sustained in 1943 and 1944 or to actual market values of 30th June 1939 (as required by the War Claims Rules).

The assessment made by Deputy Commissioner Bird was necessarily arbitrary and perhaps generous. He, however, had the advantage of seeing and hearing a number of witnesses who gave oral testimony and it is also obvious that he made a very careful and detailed study of the immense volume of documentary evidence submitted in the case. I consequently feel that he was in a better position than I am to assess the damages suffered, and I see no reason to disagree with his conclusion that the loss sustained at Wiener Neustadt amounted to a total of 5,000,000 RM.

Another problem, however, arises in connection with the assessment of loss, namely that neither the Deputy Commissioner's findings nor the evidence submitted lead to any differentiation as among the relative damages done by the four successive air raids. This problem becomes important owing to the fact that Mr. Prentice did not become naturalized in Canada until 29th October 1943, i.e. after the happening of the bombing raid of 13th August 1943. It is accordingly necessary to make a somewhat arbitrary apportionment. As the onus of proof rests throughout upon a claimant, I think it is proper to conclude, against Mr. Prentice's interest, that something more than one quarter of the total damages was occasioned by the first bombing raid. Realizing that such a conclusion is inevitably arbitrary, I would find that two-fifths of the Wiener Neustadt loss was occasioned by the August 1943 raid. This would leave three-fifths, or 3,000,000 RM., as the proportion of the loss occasioned by the three subsequent bombings.

As I have already held that the corporate claims of Woodcot Estates Limited are not allowable, and that the transfer to the Waleks did not constitute a recognizable trust in favour of the Pick family, the claims of Mrs. Bentley and Mr. Prentice must be restricted to the loss of their beneficial shares in the interests ostensibly held by Invag and Schilizzi.

The compensable loss sustained by Mrs. Bentley and Mrs. Prentice respectively may therefore be summarized as follows: Mrs. Bentley's loss would be one third of 49% of 5,000,000 RM., or \$328,580.11; Mr. Prentice's loss would be one third of 49% of 3,000,000 RM., or \$197,148.07. The foregoing conversions are computed at the rate of exchange prevailing at 30th June 1939, namely .402343.

As to expenses, the circumstances leading to the re-opening of the case might be sufficient to deprive the claimants of an award for expenses if costs incurred in Canada were involved. The War Claims Rules, however, specifically preclude reimbursement of claimants for expenses incurred in Canada, and limit expense awards to "reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling claimants to establish their claims". Substantial expenses were obviously incurred in this direction, and I would fix the amount of such compensable expenses necessarily incurred by Mrs. Bentley and Mr. Prentice in the establishing of their compensable portions of the claims at \$300.00 each.

I accordingly supplement my former recommendation of 10th December 1959 by now recommending payment of the following amounts:

(a) to Mrs. Antoinette Ruth Bentley—

(1) the sum of \$328,580.11 as compensation for loss of property at Wiener Neustadt in Austria, such payment to be in orders of Priority Nos. 3(a) to 7 inclusive and to bear simple interest from 1st January 1946 at 3% per annum.

(2) the sum of \$300.00 as her share of expenses necessarily incurred for services performed abroad for the purpose of enabling her to establish her claim, such payment to be without interest but not to be taken into account for priority purposes.

(b) to John Gerald Prentice—

(3) the sum of \$197,148.07 as compensation for loss of property at Wiener Neustadt in Austria, such payment to be in orders of Priority Nos. 3(a) to 7 inclusive, and to bear simple interest from 1st January 1946 at 3% per annum.

(4) the sum of \$300.00 as his share of expenses necessarily incurred for services performed abroad for the purpose of enabling him to establish his claim, such payment to be without interest but not to be taken into account for priority purposes.

Dated this 14 day of October, A.D. 1960.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9744

Re: Widdup

...As the Company in question is not a Canadian Company, it is not eligible to claim from the War Claims Fund. The claimant's eligibility is therefore limited to the extent of the shares which he held in the Company's capital stock. In his evidence he estimates the percentage of his holding at between 85 and 90% of the total issued capital. The learned Deputy Commissioner apparently accepted the lower of these figures as representing the claimant's actual holding. On the strength of the materials on which the computation of percentage is based, the claimant's actual holding would work out at approximately 88.91% of the total issued capital stock of the Company, and I think it would be fair to the claimant to amend the learned Deputy Commissioner's findings to that extent.

The principal difficulty of the case is to determine the market value of the property which was confiscated or looted in enemy-occupied territory during World War II. The claimant maintains that the losses were in excess of \$51,000, but that he is willing to settle for \$35,000, including his personal motor car. The Commission, of course, is not permitted to adjudicate claims on the basis of offers to settle, or other negotiations or bargaining, but only on the basis of the evidence adduced in support of the claims.

At the outset, it must be pointed out that two component elements of the Company's loss, and of the claimant's consequent claim, are not compensable under the War Claims Rules. The losses in respect of cash in banks are not compensable, because those losses apparently arose from depreciation of currency. Such losses are common to the whole populations; losses which Canadians sustained as residents or investors in the enemy or enemy-occupied country along with all other residents or investors, and are therefore not considered compensable under the Rules—Report of the Advisory Commission on War Claims, page 63, item 6.

Nor is the loss of accounts receivable considered to be compensable under the War Claims Rules. The Rules regard such losses as being due to the existence of a state of war rather than being caused by an act or operation of war—Report of the Advisory Commission, page 65, item 14.

The limit of the claimant's right to compensation would therefore appear to be 88.91% of the market value of the physical assets lost by the Company through confiscation or looting. The difficulty of computing with any degree of accuracy the amount of the property so lost is complicated by several factors:

- (a) The inventory value of stock in trade was purposely shown at a very low figure in the Company's balance sheet, with the object (among others) of protecting the Company against fluctuations of local currency. The balance sheet of the Company as of 31st December, 1941, shows the stock in trade of the Shanghai office at \$125,077.25 Chinese. I have estimated the conversion of this sum to a little over \$9,000 Canadian funds, but the claimant states that in his opinion the conversion would not yield more than \$6,000 Canadian.
- (b) The assets of the Hong Kong office are lumped in the balance sheet, so that the amount of merchandise on it does not show as a separate item. This is apparently due to the treatment of the Hong Kong office as a financial dependency of the Shanghai business.
- (c) The furniture and fixtures, as well as plant, tools and equipment, are shown in the Company's balance sheet at purely nominal depreciated values.
- (d) The claimant admits that the Company continued to carry on substantial sales of certain classes of articles after the Japanese occupation. He estimates that approximately \$30,000 worth of equipment was sold after the Japanese took over. The continuation of such sales makes it more difficult to fix with certainty the value of assets which remained on hand and were later requisitioned or looted.

I accept without question the learned Deputy Commissioner's finding as to the entire credibility of the claimant as a witness. I also accept as understandable the reasons given by the claimant for the low valuation of stock in trade and for the merely nominal valuation of furniture, fixtures and equipment. The fact remains that an upward revision of those valuations rests solely upon the uncorroborated estimates of the claimant himself. The inherent vagueness of these estimates is illustrated by the fact that the claimant considers the estimate of the Company's loss sufficiently elastic to include the value of his

personal motor car. From careful consideration of the materials in evidence and on file, in comparison with the quantum of proof required in other cases of a somewhat similar nature, I have not been able to reach a conclusion that the evidence establishes a compensable loss to the extent recommended by the learned Deputy Commissioner.

The argument and explanations recently advanced by the claimant have, however, convinced me that it would be reasonable to fix the loss of physical assets (due to confiscating or looting) by the Company in its Shanghai and Hong Kong places of business at \$15,000 for stock in trade and \$5,000 for furniture, fixtures and equipment. The claimant's compensable share of this loss would be 88.91% or \$17,782.

The learned Deputy Commissioner apparently accepted the loss of the claimant's personal motor car as an established fact, though he did not record any finding on this specific item owing to the fact that it was lumped with the loss of the Company's assets. I think that the loss of the motor vehicle is reasonably proven and that the claimant's estimate of its value at \$600 is not unreasonable. I would therefore add that item to the foregoing estimate of his compensable loss.

In arriving at his decision on the maltreatment claim, the learned Deputy Commissioner accepted the computation of the claimant to the effect that he had been interned in a Japanese-operated camp for 215 days, namely from 30th January 1943 to 19th September 1943. A check of the intervening period indicates that his duration of internment was 233 days. I would therefore amend the finding of the Deputy Commissioner to that extent.

With the variations aforesaid, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid:

- (a) \$233.00 as an award for maltreatment of himself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).
- (b) \$18,382 as an award for loss of property in Shanghai and Hong Kong, such payment to be in orders of priority Nos. 3(a), 3(b), 4(a), 4(b), and 5 and to bear simple interest from the 1st of January 1946 at 3% per annum.

Dated this 10th day of December, A.D. 1957.

Since my Report dated 10th December 1957, the claimant has submitted additional arguments and materials in support of the contention that the award recommended by the learned Deputy Commissioner should be restored.

Such materials include the audited balance sheet of The Office Appliance Company Ltd. as at 31st December 1942. This document indicates that, in spite of substantial sales in 1942, the certified gross value of stock-in-trade of the Shanghai office were still approximately two-thirds of the amount shown a year earlier, while the nominal assets of the Hong Kong office remained about the same.

This relieves to some extent the possible inference that the stock had been largely depleted by the 1942 sales. It is also to be noted that the figure to which I referred in my former Report as representing the stock-in-trade of the Shanghai office was a net figure arrived at by deducting a generous allowance for depreciation and reserves. For these, and other reasons advanced by the claimant, I am now prepared to increase my estimate of the stock-in-trade of both offices confiscated or looted by the Japanese from \$15,000.00 to \$20,000.00. The claimant's share of the additional \$5,000.00 would be 88.91%, or \$4,445.50.

I therefore recommend that, in addition to the amounts paid to him under my recommendations of 10th December 1957, the claimant be paid \$4,445.50 as an award for loss of property in Shanghai and Hong Kong, such payment to be in Order of Priority No. 5, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 24th day of March, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9753

Re: Paul

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review.

Both claimants were born in Newfoundland, and are therefore deemed to be Canadian citizens and have had Canadian national status at all relevant times. The deceased Gordon Paul was also born in Newfoundland and is deemed to have had Canadian national status at the time of the loss.

In view of the smallness of the award, the lapse of time, and the unlikelihood of any outstanding claims affecting the estate of the deceased, I agree with the apparent conclusion of the learned Deputy Commissioner that formal administration may properly be dispensed with and the award paid directly to the claimants, who under the provisions of the Intestacy Laws of Newfoundland, are entitled to divide the award in equal shares.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimants be paid \$350.00 as an award for loss of property by their son, the late Gordon Paul, at the sinking of the SS "*Lady Hawkins*", such payment to be in order of Priority No. 3(a), and to bear simple interest from 19th January 1942 at 3% per annum; subject to deduction of \$70.00 received from the Government of Canada, with interest adjustment from 25th March 1947.

Dated this 30th day of April, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9755

Re: Griffin

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted a further argument in support of the contention that the award recommended as pecuniary compensation for the death of the late Harold May Griffin's wife should be increased. The claimant particularly objects to the disallowance by the learned Deputy Commissioner of remuneration allegedly paid to one Mrs. Miller as housekeeper for the deceased Mr. Griffin over a period of eleven or twelve years subsequent to the death of his wife.

It is admitted by the claimant that Mrs. Miller did not receive any fixed salary or wages, and also that she lived with Mr. Griffin as his common law wife. The latter fact is contended by the claimant to be entirely irrelevant to the issue of the present claim for compensation.

I am unable to agree with that contention of the claimant. If Mrs. Miller had received a fixed salary as housekeeper, and the personal relationship between her and the deceased Mr. Griffin had been merely incidental, there would be merit in the contention that such personal relationship was irrelevant. In the present case, however, Mrs. Miller became in fact, if not in law, a member of the claimant's family, and their personal relationship became the primary factor of the situation. Whether, or not, the deceased Mr. Griffin lived more economically, or more extravagantly under such an arrangement than he previously had in lawful wedlock, it is impossible for the Commission to say, and I am inclined to the opinion that such a comparison would really be irrelevant. For the reasons so clearly set forth by the learned Deputy Commissioner, I see no alternative but to agree with his conclusion and to recommend that this portion of the claim be disallowed.

The Commission is informed that the beneficiaries of the late Mr. Griffin's estate under his intestacy are his four children Victor Harold Griffin, Kenneth Martin Griffin, Frank Edward Griffin, and Mary Elizabeth Griffin Cornfoot, all said to be Canadian citizens. Since, however, the late Harold May Griffin died on 4th May 1955, and had previously filed this claim on his own behalf, it is not necessary to record a finding as to the national status of his beneficiaries. . .

Dated this 9th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9758

Re: Macleod

...The claimant Christine Tamer Macleod was apparently a citizen of the United States, and received compensation for her own maltreatment through the government of that country. Her late husband, Neil John Macleod, however, initiated a claim for his maltreatment by letter dated 4th December 1952. As he was at that time a Canadian citizen, I am of opinion that, by analogy with the remarks of the learned Advisory Commissioner on p. 23 of the Report of the Advisory Commission on War Claims, the national status of the surviving widow would be immaterial as regards her claim to a portion of her late husband's maltreatment award. . . .

Dated this 12th day of December, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 45(IT) (9764)

Re: Vacca

Deputy Commissioner Francis, to whom this claim was referred, has reported to me his findings and recommendation, with his reasons therefor.

Upon reviewing the report of the Deputy Commissioner, I am of the opinion that the entitlement of the late Domenico Vacca to the awards recommended under the Treaty of Peace with Italy has been duly established, but I

am unable to agree with the opinion of the learned Deputy Commissioner that the full amount of the award should be paid to the widow, Mrs. Paolina Vacca.

If the deceased Domenico Vacca had survived, the amount of the award recommended by the Deputy Commissioner would presumably have been paid to him.

Subsection (4) of Section 3 of the *War Claims (Italy) Settlement Regulations*, as amended by *Order-in-Council P.C. 1955—977*, provides that:

- (4) Where a Canadian citizen has died on or after the day on which final payment was made to Canada by Italy of the sum of 290 million lire specified in Section 2, the Minister of Finance may pay to the personal representative of the deceased person or such other person as appears to the Minister of Finance to be entitled to the assets of the deceased person, any amount that he would have paid under subsection (1) to the deceased person if he had survived.

Final payment of the 290 million lire to Canada was made on 27th October 1952. Domenico Vacca died 11th September 1953, having previously presented his claim. The claim thereupon becomes in reality a claim by his estate. Since the late Mr. Vacca died after the final payment to Canada of the 290 million lire, payment of an award would be governed by subsection (4) cited above. I am of the opinion that the words "personal representative" and "other person...entitled" are intended to be interpreted in their technical meanings, namely executor, administrator, or equitable beneficiary of the estate of the deceased. Apparently Domenico Vacca died without a will, and no formal administration was taken out in respect of his estate. There is therefore no personal representative of the deceased in the sense intended by the *Regulations*. I am advised, however, that under the laws of the Province of Quebec payment may properly be made to the equitable beneficiaries without the intervention of formal administration. Those beneficiaries are the persons to whom, under the laws of that Province, the estate of the deceased would pass upon his intestacy, namely the widow to the extent of one-third, and the sons and daughter to the extent of one-sixth each.

I now come to the learned Deputy Commissioner's finding that the two sons who served with the Italian Forces during World War II should be disqualified, on that account, from receiving any part of this award, and that the daughter Domenica Fuoco should also be disqualified because she resides in Italy and appears to have retained her Italian citizenship. If we were to assume the correctness of that opinion, I should be obliged to advise that the potential shares of the three disqualified children would not be added to that of their mother, but would entirely lapse. That, however, is not the opinion which I have reached. The obvious difference in wording between subsections (3) and (4) of Section 3 of the *Regulations* renders it clear that Section 4 was intended to make the national status of the beneficiaries of an estate immaterial if the original claimant died after 27th October 1952.

The eligibility of the daughter Domenica Fuoco to receive her share of the award is therefore clearly established. The eligibility of the sons would also be obvious if it were not for the fact that they had served in the Italian Forces warring against Canada.

There is no specific provision in the *War Claims (Italian) Settlement Regulations* dealing with this aspect of the case. On the assumption, however, that we should import into its consideration a principle analogous to that laid down by the War Claims Rules, the situation would then be that a claimant who had voluntarily collaborated or cooperated with, or assisted, an enemy in any part of its war effort should be denied all participation in and should receive nothing out of the Fund (Report of the Advisory Commission on War

Claims, p. 26). Whether this disqualification was intended to apply to a person claiming as beneficiary of the estate of an original claimant, or only to the original claimant himself, it is not necessary to decide. The two Italian sons were Italian nationals, and presumably served in the Italian Army by reason of an obligation inherent in their national status. Such service would not be a voluntary collaboration or cooperation or assistance in violation of a loyalty owed to Canada, and would accordingly not seem to be within the intended disqualification recommended by the Right Honourable Advisory Commissioner. By analogy, I am of the opinion that the sons Antonio and Pasquale, are not disqualified from receiving their shares of the award, either by the fact that they were not United Nations nationals or by the fact that they served in the Italian Forces by reason of their obligation as subjects of Italy.

Obviously, the son Giovanni is entitled to receive his share of the award.

In my opinion, therefore, the award should be divided among the survivors in the proportion of one-third to the widow and one-sixth to each of the children. As the claim was presented in the widow's name, I think the allowance for expenses might properly be paid to her.

With the foregoing variation, I approve the report of the Deputy Commissioner, and I accordingly recommend that there be now paid to the widow and family of the late Domenico Vacca, pursuant to the *War Claims (Italy) Settlement Regulations*, the following amounts:

(a) Two thirds of the property loss of 1,348,069 lire valued as of 27th October 1952 and distributed in the following proportions:	
1. To Mrs. Paolina Vacca:	lire 299,571
2. To Antonio Vacca:	149,785
3. To Pasquale Vacca:	149,785
4. To Mrs. Domenica Fuoco:	149,786
5. To Giovanni Vacca:	149,786
(b) One Hundred percent of award in respect of fees and costs incurred by claimant in establishing claim, also valued as of 27 October 1952, to Mrs. Paolina Vacca: .	
	75,000
	<hr/>
	lire 973,713

Notwithstanding payment of the awards hereby approved, this recommendation is subject to further review in conjunction with the claimants' claim for payment of the balance of compensation for which they may be eligible from the Canadian War Claims Fund.

Dated this 11th day of December, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

CASE No. 46(IT) (9765)

Re: Rosati

...My finding, therefore, is that Nicola and Marino Rosati have a valid claim against the Government of Italy in respect of the property owned by them on June 10, 1940, which was taken over by the Italian authorities for war purposes in 1942, and that their claim is a compensable claim under the provisions of the Treaty of Peace with Italy and the *War Claims (Italy) Settlement Regulations*...

...Under the terms of the Peace Treaty claimants are entitled to receive compensation in lire to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. I find the present claimants eligible under these provisions for an award of compensation in the sum of 934,435.33 lire, valued as of October 27, 1952, and I recommend that this amount, or its equivalent in Canadian currency be paid to them in equal shares.

In accordance with the provisions of the Treaty of Peace the claimants are entitled to be reimbursed the actual and necessary expenses incurred by them in Italy in establishing the claim. In this case one property only is involved and as no local surveyor was engaged to appraise the loss the expenses actually incurred have been much less than usual. In the circumstances, and keeping in mind awards for such costs in other cases, I would allow a total of 10,000 lire for expenses incurred in Italy in establishing the claim and would recommend that this amount, valued as of October 27, 1952, be paid to the claimants in equal shares. Pursuant to the terms of the Peace Treaty the award for costs should be paid in full.

As the injury or damage to the property of the claimants was not due to war operations, as defined in the War Claims Rules, a claim in respect of such injury or damage is not a compensable claim against the Canadian War Claims Fund. Furthermore, under the War Claims Rules, seizure, sequestration, confiscation or requisition by the civil government of the country of an enemy is compensable only if it is effected on the ground of the enemy character of the Canadian owner. This is obviously not the case here, for had the claimant been in Italy or had a representative there his property would likely have been expropriated with the other properties required for the airport and there would now be no claim. The taking of the property in the manner described does not give rise to a compensable claim against the Canadian War Claims Fund. On both of these grounds I must recommend that the claim be disallowed as far as the Canadian Fund is concerned.

September 4, 1957.

JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

NOTE: *Award under Treaty of Peace with Italy confirmed by Advisory Commissioner, 31st October 1957.*

...Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation. This is obviously a case where the requisition of the property by the Civil Government of Italy was not effected on the ground of the enemy character of the Canadian owners.

I therefore recommend that this claim, so far as it relates to the Canadian War Claims Fund, be disallowed.

Dated this 31st day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9770

Re: West

The first-instance evidence in this group of claims was taken partly before Deputy Commissioner Trainor, acting as Special Examiner, and partly before Deputy Commissioner Hyndman, to whom the adjudication of the case was referred. The latter has submitted to me his report dated 9th January 1959, in which he recommends an award of \$8,000.00 for damage to store building located on Vaclavske Square in Prague, including destruction of neon sign, glass facing and plate glass show windows, but disallowing claims for losses in Austria.

On review, Counsel for the claimant intimated to me that, for reasons which appear understandable, the evidence presented before the two learned Deputy Commissioners was fragmentary and incomplete. He therefore requested the privilege of submitting additional evidence, and that privilege was granted in view of the importance of the case and the previous difficulty of making a complete presentation.

I accordingly conducted an additional hearing at Ottawa, which was attended by Mr. Keith Laird, Q.C., as Counsel for the claimant, and at which the claimant gave additional detailed evidence and explained much of the material appearing in the affidavits, exhibits, and photographs on file. That hearing was subsequently adjourned to New York City, where I heard the evidence of Vladimir J. Rott, a former resident of Prague, who was for a time Consul General of His Majesty, the King of Norway, in Prague. He was also Vice President of the Masaryk Academy of Labour at Prague, and was one of a panel of three Counsellors (or a laic judge) of the Commercial Court in Prague. Mr. Rott was an engineer by profession, a member of the Executive of the Chamber of Commerce, President of the Institute for Internal Trade, and Counsellor for the State National Bank in Prague.

Mr. Rott had been a close acquaintance of the claimant since about 1921. He and his wife Rosaria Rott, who also gave evidence, were connoisseurs of antiques and works of art, and accompanied the claimant on buying trips in Italy and other countries. They were frequent guests of the claimant, both at his Prague apartment and at his summer villa at Marienbad, and were exceptionally familiar with the furnishings and works of art which he had collected in both residences. As the Rotts were not of Jewish racial origin, they were able to remain in Prague until 1948. They were obviously both thoroughly reliable witnesses and gave valuable assistance in this case not only by corroboration of the claimant's evidence as to his possession of valuable furnishings, but also by independent testimony as to the circumstances of their disappearance.

The claimant was a prominent and apparently wealthy business man in Czechoslovakia before the German occupation. He was chiefly engaged in the selling of silk and wool products. His principal place of business was located on Zellezna Street in Prague. He had joined two former buildings to constitute one unit, which he used partly as a retail store and partly as a distributing centre for merchandise to be sold in his other retail branches. The claimant owned the premises of this main store, and its fixtures and furnishings were obviously of a costly and valuable type.

He had one other branch of his business in Prague, namely the store on Vaclavske Square, in respect of which Deputy Commissioner Hyndman recommended an award; the claimant owned the building, fixtures and stock in trade of this branch. He had also a silk house subsidiary located in Moravska; the claimant owned the stock in trade and fixtures, but not the building. In addition, the claimant operated approximately 15 retail branches throughout Czechoslovakia and, I believe, a number in other countries.

Being a bachelor, the claimant resided partly in a rented apartment (consisting of nine very large rooms, besides pantries, servants' quarters, et cetera) in the City of Prague, and partly in a large villa (which he owned) at Marienbad. The apartment was rented unfurnished from one Eurban, a German industrialist. The claimant had both dwellings furnished on a very lavish scale with costly works of art and curios. He testifies that he had 36 Gobelin tapestries, which cost him in the vicinity of \$50,000. An Italian altar piece, which he purchased in Italy in company with the Rotts, cost in the vicinity of \$15,000 installed. Another room was furnished with an old Dutch baroque installation, including genuine tapestries, walls plated with old lead, and numerous costly candelbras. He had a profusion of expensive rugs and carpets, including numerous genuine silk ones, and he had also a collection of valuable Dutch paintings.

The Rotts testify that in their opinion \$150,000 is a moderate estimate of the value of the furnishings in the claimant's apartment, and \$40,000 to \$50,000 of the furnishings in his Marienbad villa. They base their opinion on values prevailing at the time of purchase in the early 1930s. The claimant was apparently prominent in Prague not only in commercial, but also in social, circles, and he habitually entertained the elite of the business and professional worlds, as well as of the artistic and theatrical.

After the claimant's departure from Czechoslovakia in 1938 or 1939, his Prague apartment was taken over for use by the heads of the Gestapo organization, and his Marienbad villa by those of the Hitler Youth. The Rotts, and Mr. Rott in particular, frequently visited the apartment building during the war years, as their lawyer's office was located in the same building. The Rotts also had occasion to visit the actual apartment about 1939 for the purpose of helping the claimant's housekeeper prepare for a concentration camp. All the furnishings appeared to be still there on that occasion, with the exception of some jewels which the claimant had been able to secrete.

In April 1945, on occasions when Mr. Rott was visiting his lawyer, he noticed that many objects which he recognized as furnishings of the claimant's apartment were packed and were being transported by German soldiers. On one occasion he saw many such objects being loaded into a lorry which was standing before the house. On other occasions he saw carpets, boxes, and pieces of furniture from the apartment lying on the stairway as if prepared for transportation. The articles noticed included a valuable carved chest, which he and the claimant purchased in Florence. Mr. Rott is unable to say how many lorries were loaded, or how often.

The claimant's places of business were taken over and operated for varying periods by the Nazi occupation authorities. There is evidence to the effect that those portions of the original stock in trade, fixtures, and equipment of the various stores which were not sold by the Nazis in the intervening years were destroyed by war operations or looted during the months of April and early May 1945. The evidence is particularly clear to this effect in respect to the two Prague stores and the silk house subsidiary in Moravska. There is no detailed evidence as to the ultimate fate of the claimant's businesses at other points in Czechoslovakia, which I believe to have been operated in rented premises, though it may be surmised from the evidence that they suffered a similar havoc, probably on a less severe scale than happened in Prague. I am, however, of the opinion that there is not sufficiently explicit proof to warrant the granting of an award for losses at the claimant's stores, with the exception of those in Prague and Moravska.

The evidence clearly establishes the Nazis confiscated the rentals of properties belonging to the claimant, including a 15-acre vegetable garden, and offices occupied by the Holland America Line and other tenants in the store

building on Vaclavske Square. The total of such confiscated rentals is computed at \$4,938.00. The claimant suggests that the sum of \$500.00 might fairly represent the portion of the confiscations related to the period of the war following 13th January 1945. I do not think his estimate is excessive.

The main store on Zellezna Street was substantially damaged by German heavy weapons in the last few weeks of the war. The silk house subsidiary in Moravska was totally destroyed by bombing in April 1945, along with the residue of its stock in trade and fixtures; the claimant, as I have already noted, did not own this building. The store on Vaclavske Square in Prague was not directly hit, but suffered severe damage, including the destruction of the costly neon sign, the glass wall facing, and the large plate glass display windows.

There is evidence that the City of Prague expended a very large sum of money in the reconditioning of this building after the war. The expenditure was necessitated by the relocation of the public thoroughfare in that locality, and it may be suggested that the portions of the building which were destroyed by war operations would in any event have been at least partly demolished in the course of civic reconstruction. I am, however, of the opinion that such an argument would not be valid, as the normal measure of war damages is the difference between the market value of the property immediately before the damage and the market value immediately after the damage. The damage to this particular building in the last weeks of World War II is established to have been very considerable.

On the whole, it is obvious that the claimant suffered a tremendous property loss in Czechoslovakia and other European countries by the cumulative operation of the Nazi invasions and the events of World War II. As the case is well documented and the witnesses appear entirely credible, it would be comparatively simple to assess the totality of his loss. The real difficulty experienced by the Commission is to determine what portion of the loss was occasioned by operations of war within the meaning of the War Claims Rules, and more particularly what portion was caused by acts happening on or after 13th January 1945, on which date the claimant became a naturalized Canadian.

There are, at the outset, a number of branches of the claims which, I fear, must be disallowed:

A. *Claim for Losses in France*

The claimant acquiesces in the disallowance of this branch of the claims, as he is unable to establish that any portion of the losses took place after he had acquired Canadian national status.

B. *Claim for Losses in Austria*

The claimant's properties in Austria were apparently confiscated under decrees of confiscation passed by the Nazi regime, and revested after the war by orders of the District Court, Central Town, Vienna. Mr. Laird contends that the prior confiscation did not have legal validity to divest the claimant's ownership, but that the confiscatory law was void *ab initio* and the property continued to belong to Mr. West until the time of damage by war operations. I have carefully weighed the merits of this contention, but I feel bound to follow the formula of interpretation adopted by the Commission as a result of careful consideration at a series of meetings of the Deputy Commissioners, and subsequently applied in such cases as No. 1486—*Whitehead*, and No. 9798—*Mahler, et al.* That formula is to the effect that the ownership of a claimant must be determined as at the time of war loss or damage; that previous confiscatory measures enacted and carried out by a government recognized by Canada as the *de facto* government of the country of the situs must be recognized as divesting the ownership of a claimant; and that the Commission cannot give effect to post-war restoration measures as retroactively revesting the ownership at times including the date of war loss or damage.

I am free to admit that this formula of interpretation is not clear of difficulties, but I have most carefully considered and reconsidered it during the last 15 months, and I am still convinced that, on balance, the interpretation recommended by the Deputy Commissioners is the proper one. The claim for losses in Austria must therefore be disallowed.

C. Forced Contributions to Nazi Funds

I am doubtful if this item would constitute a compensable claim under the War Claims Rules. In any case, it is difficult to establish that any portion of it is related to the period of the claimant's Canadian nationality.

D. Looting of Money and Securities in Bank

The claimant finds it impossible to prove the date of seizure of any of his securities, and this branch of the claims must therefore be disallowed.

Compensable Losses in Czechoslovakia

There is considerable direct, documentary, and photographic evidence as to the actual damage and destruction of buildings and equipment in Prague and equipment in Moravska.

Any measure of confiscation which may have been carried out by the Nazi authorities in Czechoslovakia prior to the claimant's war losses will not be regarded as having divested the claimant's ownership, following the formula applied in CASE No. 1486—*Whitehead*.

I am also of the opinion that a fair inference may be drawn from the evidence that some portion of the claimant's actual stock in trade and operating equipment would remain on his various business premises until after he had become a Canadian, and would be the subject of looting or of destruction by war operations during the last weeks of the war. This would be a compensable loss under the principles laid down in my report on CASE No. 9288—*Gruber*.

I am also prepared to find that a valuable proportion of the claimant's furnishings was looted from his apartment in Prague, and inferentially to a lesser degree from his villa at Marienbad during the last few weeks of the war. This, in my opinion, would constitute a compensable loss for the reasons set forth in my report on CASE No. 4493—*Anny Placek*. The previous seizure by the Gestapo for their own use was consistent with ultimate return of the goods to the claimant, and his actual loss occurred when the goods were asported.

There remains the difficult question of assessing the monetary loss caused by such operations of war within the relatively short period during which the claimant was eligible for compensation. The best that I can do in the circumstances is to place myself in the position of a jury. I realize that the resulting estimates may not do full justice to the actual compensable losses sustained by the claimant, but it must be remembered that the onus of proving each item of the claim remains upon him.

I would estimate and find the compensable losses suffered by the claimant in Czechoslovakia by reasons of operations of war, between the dates of 13th January and 8th May 1945 as follows:

(1) Store on Vaclavske Square, Prague:

(a) Destruction of neon sign	\$ 8,000	
(b) Destruction of glass wall facing	10,000	
(c) Destruction of plate glass window	5,000	
(d) Destruction and looting of residue of stock in trade	8,000	
(e) Destruction and looting of store fixtures and equipment	5,000	
		<hr/>
		\$ 36,000.00

(2) Silk house subsidiary in Moravska:		
(a) Destruction and looting of residue of stock	4,000	
(b) Destruction and looting of store fixtures, neon sign, and display showcase	11,000	
		15,000.00
(3) Main store on Zelezna St., Prague:		
(a) Destruction and looting of residue of stock in trade	5,000	
(b) Destruction and looting of fixtures and equipment	10,000	
(c) Damage to building. The evidence indicates heavy damage to this building, but the exact extent of the damage is not established—Token award	4,000	
		19,000.00
(4) Villa at Marienbad:		
Token award for destruction and looting of residue of furnishings during April and May 1945		5,000.00
(5) Apartment in Prague—estimate of destruction and looting of residue of furnishings in April and May 1945		
		30,000.00
(6) Confiscation of rentals:		
		500.00
		<hr/> \$105,500.00

As to expenses, the claimant apparently incurred substantial expenses in Austria in preparing the branches of his claim which arose in that country. Since those branches are disallowed, the expenses so incurred must also be disallowed.

As to his expenses incurred in preparing the claims arising in Czechoslovakia, I would estimate their compensable amount at \$600.00.

I therefore recommend that the claimant be paid:

(a) \$105,500.00 as an award for loss of, and damage to, property in Czechoslovakia, such payment to be in orders of Priority Nos. 3(a) to 7 inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$600.00 as an award for expenses necessarily incurred for services performed in Czechoslovakia for the purpose of enabling the claimant to establish his claims, such payment to be without interest, but not to be taken into account for priority purposes.

I recommend that the substantial claims for losses in France and Austria, as well as those for forced contributions to Nazi funds, for alleged losses at subsidiary stores excepting those in Prague and Moravska, and for looting of money and securities, be disallowed.

Dated this 15th day of June, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9771

Re: Scherer

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, he has made additional submissions, mainly seeking clarification of certain points in the Deputy Commissioner's report.

The claimant particularly refers to the circumstances under which he "withdrew the claim made in respect to personal bank accounts". The explanation of withdrawal of that branch of the claim is apparently that a technical settlement had been received from the German bank. That settlement was on the basis of the revaluation of German currency in June 1948. Obviously, the claimant must have suffered a very substantial loss in respect to this item. Even, however, if it were found that the original divesting or blocking of the claimant's bank account could form the basis of a compensable war claim, the reversion of the account in its owner after the war, after a shrinkage in value due to inflation or depreciation, would, by the provisions of the War Claims Rules, preclude any ultimate compensation from the War Claims Fund. The loss would be a loss in the value of a money claim due to inflation, and would therefore not be compensable. (Report of Advisory Commission—p. 63, item 6).

As to the claim for loss of tangible assets, there are two respects in which, in my opinion, the Deputy Commissioner's award calls for a downward revision:

(1) The learned Deputy Commissioner found that at the time of the damage to the buildings, plant, machinery and goods of the firm by acts of war on 20th and 27th March 1945 the claimant was a silent partner in the Becker Weaving Mill at Raesfeld, Westphalia, Germany, and that his share consisted of 8% of the capital of the firm and the right to a similar percentage of the profits. The terms of the claimant's silent partnership are somewhat complicated, but a notation cited by the learned Deputy Commissioner provides that "the shares of the silent partners do not participate in the real value of the reserves of the enterprise in case of liquidation". The difference between 250,000 RM, (representing the total paid-up capital of the firm), and 281,916.97 RM, (representing the assessment of total loss sustained by the property), would appear to be in the nature of, or to arise from, a "real value of the reserves of the enterprise". So far as the claimant, as a silent partner, is concerned, loss of or damage to the property in excess of the amount of the paid-up capital would therefore not seem to be a compensable loss. I therefore consider that the claimant's share of the loss occasioned by war operations should be reduced from 22,553.36 RM to 20,000 RM (being 8% of 250,000 RM). The latter computation would be the equivalent of \$8,046.86 at the prescribed rate of exchange, namely .402343 as of 30 June 1939.

(2) As the property damage is situate in Westphalia (now in Western Germany) it would appear that the claimant would have been eligible to claim under the terms of the German Equalization of Burdens Law. The Becker Firm was described as an "unlimited mercantile partnership". The relevant law provides that "in case of partnerships each partner is eligible to the extent to which he is entitled to such payments under the partnership agreement". The claimant apparently did not file a claim against the German Government, although recommended to do so by the Director of the War Claims Branch, Department of the Secretary of State. A claim was apparently filed by the partnership firm, and had not been settled at the latest information available to the Commission. Whether, or not, that claim includes the loss of the present claimant, he must in any case, if eligible to claim against Germany, be deemed to have received the amount which he could have obtained from that source by reasonable diligence in the prosecution of a claim.

This case must therefore, for the present at least, be treated as one in which payment in respect of the claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a

position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Owing to the provisions of Rule of Procedure No. 20, my present report should be treated as an interim recommendation, which will be subject to further review when the claimant has had an opportunity of expressing his comments on the proposed modifications of the Deputy Commissioner's award.

With the foregoing modifications and reservations, I approve the report of the Deputy Commissioner.

I therefore recommend that the claimant be paid (subject to deduction of compensation otherwise provided for) \$8,046.86 as an award in compensation of his share for damage to property in West Germany, such payment to be in orders of Priority Nos. 3(a), 3(b), and 4(a), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 4th day of December, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9776

Re: Department of National Revenue

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and has also been notified that I felt it necessary to reverse the Deputy Commissioner's recommendation, and to recommend the disallowance of the claim for the reasons set forth below. The claimant has acquiesced in the proposed disallowance.

At the middle of page 2 of the learned Deputy Commissioner's report he states that in view of lack of inquiry between the end of the war and 1956, and in the absence of any evidence as to looting, he would be inclined to recommend that the claim be disallowed. Since, however, the loss took place in a theatre of actual warfare, and the cause cannot be established, the learned Deputy Commissioner applied a provision of the War Claims Rules to the effect that looting in such cases is to be conclusively presumed where the cause of the loss or disappearance cannot be established.

My interpretation of that provision of the War Claims Rules is that the loss or disappearance must first be established, with reasonable certainty, to have taken place not only in a theatre of actual warfare, but during the period of hostilities of World War II. It is, I think, extending the basis of the presumption of looting too far to apply it in a situation where the goods *may have* disappeared during World War II, but may equally well have disappeared at any time during the succeeding eleven years.

On the basis of that interpretation, I have felt obliged to reverse the decision of the Deputy Commissioner, and I therefore recommend that this claim be disallowed.

Dated this 2nd day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9780

Re: Beer

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The original claimant, Dr. Paul Beer, was furnished with a copy of the Deputy Commissioner's report and on or about 9th January 1957 he advised the Commission that he was satisfied with the award recommended by the Deputy Commissioner.

The late Dr. Beer and his wife, Lydia Beer, originally presented the claim in their lifetime. Mrs. Beer died in 1953, and Dr. Beer died on 16th January 1957. Probate of Dr. Beer's Last Will and Testament was granted to his sons, Thomas E. Beer and Michael Beer, by the Surrogate Court of the County of Halton, Ontario, on 25th February 1957.

As both Mrs. Beer and Dr. Beer presented the claim in their lifetime, it is not necessary to record a finding as to the national status of the beneficiaries of their estates.

I should have some hesitation in accepting the finding of the learned Deputy Commissioner to the effect that Dr. Beer and his wife were joint owners of the properties concerned in the sense of the English common law, which would result in the devolution of the whole property upon one joint owner on the death of another. I should rather be inclined to the view that husband and wife owned the properties (and consequently the right to compensation) on a basis more nearly analogous to the English law of tenancy-in-common.

In CASE No. 9517—*Grimston*, the Deputy Commissioner adopted the decision of the Supreme Court of Ontario, and of the French authorities, to the effect that a claim for damage done to property in France was in the nature of a chattel and formed the residue of the estate of the claimant to be distributed according to the laws of the jurisdiction of his domicile. I then approved the decision of the learned Deputy Commissioner to that effect.

I have no doubt that the respective claims of Dr. Beer and Mrs. Beer should follow the same principle, and should devolve upon the beneficiaries of their estates in accordance with the laws of Ontario, the province of their last domicile.

Mrs. Beer apparently died without a Will, and the beneficiaries of her estate would be her husband and her two sons, Thomas E. Beer and Michael Beer. Both her share of the claim, and the share of her husband, Dr. Beer, have therefore ultimately devolved upon Thomas E. Beer and Michael Beer, though perhaps in different rights. I therefore consider it proper that a recommended award should be paid to Thomas E. Beer and Michael Beer, as executors of their father's estate, and in their own entitlement (if any) as beneficiaries of their mother's estate, leaving the ultimate distribution to be determined according to the laws of the Province of Ontario.

I find in the Report of the Deputy Commissioner a slight clerical error, appearing in item (3) of his summarized recommendation. In that item he combines loss of chattels in house and damage to fence and well. He omitted, however, to add into the item the \$120 allowed for damage to fence and well. This should make a total of \$570 for item (3). This error, however, is purely clerical, as the grand total of \$6,270 includes the \$120 to which I have referred.

Subject to the foregoing comments, I approve the Report of the Deputy Commissioner.

I accordingly recommend that there be paid to Thomas E. Beer and Michael Beer, as executors of the Last Will and Testament of Dr. Paul Beer, and in their own entitlement, the sum of \$6,270 as an award for loss and damage suffered by the late Dr. Paul Beer and the late Mrs. Lydia Beer to property in Hungary, such payment to be in orders of Priority nos. 3(a), 3(b) and 4(a) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 12th day of December A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9784

Re: Broomhall

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

A preliminary difficulty arose in connection with the question of this claimant's eligibility from the point of view of national status. By report dated 23rd January 1956, the learned Deputy Commissioner found that the claimant had a common law domicile in Canada from the date of her husband's death on 3rd November 1940 until the date of the report. As she was a British subject, she would therefore be a Canadian national at the time of her alleged loss within the meaning of Qualification VI on p. 24 of the Report of the Advisory Commission on War Claims. By an informal memorandum, I approved the Deputy Commissioner's findings as to domicile.

There still remained the question whether, or not, the claimant was a Canadian citizen at the time of presentation of her claim. At the time of the main hearing, the learned Deputy Commissioner apparently assumed that such was the case, but the Commission received from the Department of Citizenship and Immigration a notation to the effect that the Department had no record of Mrs. Broomhall ever having applied for a certificate of Canadian citizenship. The Department also certified that the claimant had not automatically acquired Canadian citizenship under Section 9(1)(b) on 1st January 1947.

When I drew this difficulty to the attention of the claimant, she applied for and obtained a certificate of Canadian citizenship dated 31st December 1957. As regards the requirement of the War Claims Rules that a claimant must have been a Canadian citizen at the time of presenting the claim, the Commission has interpreted this provision liberally to the extent that a claimant who was entitled to a certificate of citizenship at the time of presenting a claim, but had not actually obtained a certificate until later, is considered to have complied with the requirement. As the claimant's status was adjusted to that of a "landed immigrant" on 16th July 1946, she would have been entitled to a certificate of citizenship at any time after 16th July 1951. The recently issued certificate therefore enables the claimant to comply with the citizenship requirement of the War Claims Rules according to the above mentioned interpretation.

I therefore find that the claimant has now complied with all the requirements of the Rules relating to eligibility from the point of view of national status.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that the claimant be paid \$4,919.25 as an award for loss of property in Shanghai, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 31st day of January, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9785

Re: Lowe, Lamack Ltd.

.... I have also notified the claimant, pursuant to provisions of Rule of Procedure No. 20, that I expected to find it necessary to reduce the amount of the award recommended by the learned Deputy Commissioner (Bird) by \$93.92. This is the amount paid by the claimant as War Risk Insurance premiums on the goods lost. Such payments are not regarded by the War Claims Rules as being a factor in the computation of compensable loss.

The claimant has acquiesced in the deduction of the amount in question, and I therefore recommend the variation of the Deputy Commissioner's report to that extent....

Dated this 17th day of January, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Since the making of my recommendation dated 17th January 1957, it has been brought to my attention that, in addition to the amounts totalling \$93.92 which I then deducted from the award recommended by the Deputy Commissioner as representing a factor of the estimated cost composed of War Risk Insurance premiums, there should be further deducted an item of \$46.52, being War Risk Insurance premium relative to another invoice for gum arabic.

Pursuant to the provisions of Rule of Procedure No. 20, I have notified the claimant of the necessity of such further deduction. The claimant has not presented any materials in opposition to the proposed deduction, and I therefore amend my previous recommendation accordingly....

Dated this 28th day of February, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9789

Re: Britton

.... It would, perhaps, appear that the sum of \$600.00 was a small amount of insurance for the claimant to carry on goods valued considerably in excess of \$1,429.00. Since, however, the goods in question were personal and household goods, I am not disposed to require such a large percentage of insurance coverage as would be required in the case of a commercial shipment. I am inclined to accept the learned Deputy Commissioner's finding that \$600.00 is a reasonable deduction in the circumstances....

Dated this 19th day of March, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9793

Re: Kennedy

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The learned Deputy Commissioner recommends payment of \$650.00 as an award for loss of property by the claimant at the time of the sinking of the S.S. "Athenia", but notes that the claimant did not apply for, or receive, an *ex gratia* award from the United Kingdom Government, the reason being that she was not aware of entitlement to such an award.

The War Claims Rules require this Commission to deduct not only compensation actually received from other sources, but compensation which a claimant would have received but for neglect or default in the prosecution of a valid claim against an alternative source.

In the present case, the learned Deputy Commissioner apparently accepts the evidence of the claimant to the effect that she was not at any time aware of entitlement to the British Ministry award. In view of the exceptionally vague manner in which the availability of that award was brought to the attention of potential claimants, the lack of any pre-established deadline for reception and payment of claims, and other reasons set forth in CASE No. 2017—*Gladys M. Crowley*, I am of the opinion that this is a case in which presumed payment of such an *ex gratia* award should not be deducted.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$650.00 as an award for loss of property at the Sinking of the S.S. "Athenia", such payment to be in order of Priority No. 3(a) and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 22nd day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9796

Re: The Ontario Glove Manufacturing Co. Limited

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further materials in support of the contention that the recommendation of the Deputy Commissioner should be reversed and an award recommended.

The claimant re-submits its original contention that the goods in question were shipped to their Netherlands representative, Mr. Blokjesman, on a consignment basis, the understanding being that the title should remain in the claimant until the goods were progressively sold. The claimant also submits that, though considerable time had elapsed from the date of shipment to the time in 1942 when Mr. Blokjesman was apparently deported by the Germans, it is reasonable to infer that "a portion, at least, of the goods would be commandeered or looted by the Germans upon their occupation of Holland." The gloves, it is argued, being especially suitable for cycling and motoring, would have been a prize for the invading soldiers.

Assuming the correctness of the claimant's contention that the goods were shipped on consignment to Mr. Blokjesman, and that title was not intended to pass until the goods were progressively disposed of by the consignee, it is equally arguable that the growing demand for goods of that kind would have enabled Blokjesman to dispose of all of them between the 1938 and 1939 dates of their shipment and the invasion of Holland by the Germans on 10th May 1940. The demand for his actual stock would be enhanced by the fact that a shipment which he had ordered from another company failed to arrive.

It is therefore pure speculation whether Blokjesman still had any of the goods on hand, or not, at the time of the German invasion. The claimant argues that it "could be just as easily assumed that these goods were lost as a direct result of the German invasion." It must, however, be remembered that the onus of establishing the necessary elements of a claim rests upon the claimant in accordance with the War Claims Rules.

In addition to the reasons set forth by the learned Deputy Commissioner, I note that in a letter written by the claimant to Blokjesman's daughter on 17th November 1945, they make use of the following expression: "We might add that at the time Germany entered Holland, your father was owing us \$3,100.00, but we had written this amount off our books when the Germans attacked Holland, and filed the claim with our Government at Ottawa."

This admission by the claimant is consistent with only two hypotheses: either that the goods had been sold outright to Blokjesman; or, that Blokjesman had received the goods as representative of the claimant and had incurred the indebtedness by progressive sale of the various shipments.

On 19th January 1955 I pointed out to the claimant that "if Mr. Blokjesman was in normal possession of his premises from the outbreak of the war in September 1939 to his 'transportation' three years later, one would expect that some persons living in the vicinity would be able to give some evidence as to what happened to the premises or their contents." Some evidence has been produced to the effect that in 1945 the former residence and warehouse of Blokjesman had been completely demolished. There is, however, no evidence as to the date of the demolition, or as to the progress of Blokjesman's business between the commencement of hostilities and his transportation.

On a very careful review of the Deputy Commissioner's report, I find myself constrained to approve it without variation.

I therefore recommend that this claim be disallowed.

Dated this 9th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9798

Re: Aszkanazy

Deputy Commissioner Bird has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioner's reports, and, on review, have submitted an argument in support of the contention that the Deputy Commissioner's recommendations should be reversed and awards recommended. They contend, particularly, that the Nazi Government in Austria in 1938 could not morally or *de jure* be considered to be the legitimate government of the country, and that therefore the seizure and sale of the claimants' property was invalid and void.

This is one of a numerous and important group of claims in which several problems of difficulty have arisen relating to the effect of pre-war and wartime confiscations of property by German authorities in Germany and German-occupied countries, and also relating to the effect of post-war measures of restoration and restitution in the same countries. Although not all such problems are involved in the present case, I consider it desirable to make here a comprehensive statement of the conclusions which I have reached as to the proper interpretation of the provisions of the War Claims Rules involved in the whole group of claims.

NOTE: See formula adopted by Deputy Commissioners' meetings as set out in Case No. 1486—*Re: Whitehead*.

... Application of the foregoing principles to the present case leads to the conclusion that the claimants were not the owners of the property at the time of war damage, and have therefore not a compensable claim under the War Claims Rules.

Having reviewed the Deputy Commissioner's reports, I approve his findings and recommendation without variation.

I accordingly recommend that this claim be disallowed.

Dated this 10th day of November A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9799

Re: Scappatura

A question has been raised as to the eligibility of this estate to receive compensation from the War Claims Fund, owing to the alleged collaboration of the late Vincenzo Scappatura with an enemy of Canada in a part of its war effort.

The proceedings relevant to a decision of this question may be recited as follows:

The deceased was detained and interned on the 12th June 1940 under the provisions of Regulation 21 of the Defence of Canada Regulations. Particulars of the reason for his detention were furnished to him, as follows:

- "(1) That you were born in Italy and acquired Canadian Naturalization September 11th, 1928, Certificate No. 56914, Series A.
- (2) That you were a member of the Italian Fascio Abroad, in particular the Fascio of Sudbury, Ontario.
- (3) That you were a member of the Popolavero.
- (4) That you took part in the activities of the organizations heretofore mentioned which organizations were declared illegal in Canada by Order in Council dated June 12, 1940."

The deceased subsequently applied before Fortier, J.S.C., as Advisory Commissioner on Orders of Restriction and Detention, for his release from internment. The application was refused on 7th August 1940, Mr. Justice Fortier giving the following reasons:

"Because of his evident pro-Fascist inclinations, I am of opinion that his release might offer a danger to the security of the state, and I therefore recommend his continued detention."

On 18th December 1942, a further application was refused on the recommendation of the Advisory Committee consisting of Judge Miller and Messrs. Taschereau and Dickson:

"The Committee thought that this man was shifty and untruthful. They are satisfied he acted as a confidential messenger for the Italian Vice Consul, that all his interests are in Italy, and he is not loyal to this country and that, if released, he might constitute a danger to the state. They therefore recommend his continued detention."

The Advisory Committee reached the same decision on review on 11th February 1943:

"For the reasons set out in their previous report, and particularly because he acted as a confidential messenger for the Italian Vice Consul in Toronto, carrying money and secret instructions to an agent of the latter, the Committee are still of the opinion that this man should not be released."

It appears that in May 1938, the deceased had made a series of anti-British and pro-Fascist statements, which were quoted by the North Bay Nugget in its issue of 27th May 1938.

Following the conclusion of the war with Italy, the deceased was released on conditional parole on 20th September 1943, and it appears that there were no adverse reports as to his conduct after his release from internment. He died at Sudbury on 22nd April 1947.

It is true that the acts which formed the basis of Mr. Scappatura's internment were committed before the commencement of hostilities between Canada and Italy, though the Advisory Committee obviously considered that he was likely to continue such acts unless restrained by internment. His internment was therefore in the nature of preventive custody.

The War Claims Rules provide that "where there was any voluntary collaboration or cooperation with or assistance to an enemy, in any part of its war effort, on the part of a claimant, that claimant (and his estate or heirs) should be denied all participation in and should receive nothing out of the War Claims Fund." (Report of the Advisory Commission, page 26). It seems to me necessary to interpret the foregoing rule so as to include a claimant who was interned by reason of collaboration with a country which eventually became an enemy, in the preparation of its war effort, and who presumably had to be prevented by internment from continuing his collaboration with that enemy's war effort in time of actual hostilities.

The present claimant was unable to convince successive tribunals that, if released, he would not have continued to collaborate with the then Italian enemy in a part of its war effort. On the interpretation of the War Claims Rules which I have reached, he, as well as his estate and his heirs, would be precluded from receiving compensation from the War Claims Rules.

It is therefore unnecessary to examine the validity of this claim in other respects, and I have no alternative but to recommend that it be disallowed.

Dated this 1st day of June, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 49 (IT.) (9799)

Re: Scappatura

I have found it necessary to recommend the disallowance of this claim, so far as the Canadian War Claims Fund is concerned by reason of the fact that the late Vincenzo Scappatura was found to have collaborated with, or to have been restrained by internment from collaboration with, a part of the war effort of the then Italian enemy.

The Treaty of Peace with Italy and the War Claims (Italy) Settlement Regulations do not contain any specific provision similar to that of the War Claims Rules, which would prevent the recommendation of payment of an award in such circumstances. It would, however, appear to me that the provision of the War Claims Rules to which I have referred, as it appears in the Report of the Advisory Commission on War Claims at page 26, is not so much the statement of a new and specific prohibition, as the restatement of a general equitable principle which would prevent the granting of compensation to claimants who are unable to present their claims with clean hands. I am therefore of the opinion that the same equitable principle should be applied in the disposition of claims under the Treaty of Peace with Italy.

A copy of my report on the claim under the War Claims Rules is hereto attached. From the decisions of the successive tribunals which considered Mr. Scappatura's applications for release from internment, it was obviously considered necessary to continue his detention in order to prevent him from persisting in acts which would have amounted to voluntary collaboration with the enemy in its war effort. I consider that it would therefore be inequitable to allow the deceased, or his estate or heirs, to receive compensation out of a fund established for the benefit of Canadians.

I therefore have no alternative but to recommend the disallowance of this claim.

Dated this 1st day of June, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

CASE No. 9803

Re: Hall

Deputy Commissioner Marion has submitted to me his findings and recommendation on this claim, with his reasons therefor, in the form of a report with a supplementary report relating to expenses and to the national status of the pecuniary beneficiaries.

The present claimant, The Royal Trust Company as Executor of the Estate of Mrs. Alice Lauretta Bennett Hall, has been furnished with a copy of the Deputy Commissioner's reports and has acquiesced in the aggregate award thereby recommended, though contending that the total award should not be subject to reduction on account of the ineligibility of two of the pecuniary beneficiaries of Mrs. Hall's estate.

The claim is for loss of the respective interests of the late Mr. and Mrs. Hall in partnership assets of a business in Hong Kong and in household effects in their suite at the Peninsula Hotel. Mr. Hall died on 27th January 1944, leaving his widow Mrs. Hall as sole executrix and universal legatee under his will. Mrs. Hall died on 8th February 1949, leaving the present claimant as her sole executor, and naming nine potential pecuniary beneficiaries of assets such as would include the present award. Both Mr. and Mrs. Hall were domiciled in the Province of Quebec.

If the deceased claimants had been domiciled in an English-law province, I should have expected Mr. Hall's interest in the claim to be presented by an administrator *de bonis non* of his estate. Mr. John B. Claxton, however, who appeared for the claimant at the argument on review, submits that under the laws of Quebec the assets of Mr. Hall's estate became legally vested in Mrs. Hall as universal legatee, and that therefore both Mr. Hall's and Mrs. Hall's interest in the claim are properly represented by her executor. Counsel for the Commission agreed with this contention of Mr. Claxton, and I therefore accept it as representing the true state of the Quebec law.

It is also agreed that the learned Deputy Commissioner was correct in finding that Mrs. Florence May Fraser and Mrs. Lilian Eileen Kershaw were not at any time Canadians, and that the remaining pecuniary beneficiaries of Mrs. Hall's estate, so far as potentially sharing in the present award is concerned, were all Canadian citizens at the time of presentation of the claim. Both Mr. and Mrs. Hall are found by the Deputy Commissioner to have been Canadian nationals at the time of the acts causing the loss or damage complained of.

Mr. Claxton, in the course of an able and ingenious argument, has admitted that Mrs. Fraser and Mrs. Kershaw are not entitled, under the War Claims Rules, to benefit by the distribution of an award payable from the Canadian War Claims Fund. He has, however, contended that, since under Quebec law the claims of legatees who have particular title to their legacies are charges against general legatees, who are possessed of all the rights of the deceased in the assets of the estate, subject to payment of liabilities and particular legacies, therefore the general legatees are entitled to receive the full award to which the deceased claimant Mrs. Hall would have been entitled had she lived. He maintains this contention even if the result would be that, because the non-Canadian beneficiaries are not entitled to benefit by the award, the share of the Canadian beneficiaries would therefore be increased. In sum, Mr. Claxton argues that the general legatees have a claim to the extent of the full aggregate award and that if, by reason of the War Claims Rules, they cannot pay any portion of the award to the non-Canadian beneficiaries, they are entitled to retain the whole for distribution among the Canadian beneficiaries.

After very careful consideration, I feel myself bound to reject this contention of the claimant's counsel. The answer to Mr. Claxton's argument appears to be that the present award is not strictly a general asset of Mrs. Hall's estate, but that it is at least a quasi-particular asset in the sense that two certain beneficiaries are excluded from participation in it. In every case of a similar nature, where it has been found that certain non-Canadian beneficiaries are ineligible to participate in the benefits of an award, the Commission has not allowed the eligible beneficiaries to increase their shares by dividing among them the potential shares of the ineligible claimants, but has reduced the aggregate award by the amount to which the non-Canadian beneficiaries would have been entitled. Both from the point of view of equitable fairness, and from the point of view of precedents established by the Commission, I am convinced that a similar reduction must be made in the present case.

Numerous suggestions have arisen as to the proper method of computing the necessary reduction or apportionment. The most equitable method of computation would appear to be that the proposed reduction should bear the same ratio to the aggregate award as the total of the particular legacies of the ineligible claimants bears to the aggregate of Mrs. Hall's estate available for distribution (including the amount of the present award).

The particular legacy of Mrs. Fraser amounts to \$6,000.00, and that of Mrs. Kershaw to \$276.87, or a total of \$6,276.87. The total of the particular legacies under Mrs. Hall's will amounts to \$20,000.00, of which approximately 50% has

been paid; the latter details appear to be irrelevant to the suggested computation, but I mention them for purposes of reference. The total general estate available for distribution among the legatees is stated to have amounted to \$12,330.75, which added to the presently recommended award gives a grand total of \$39,330.75. Application of the suggested apportionment yields the result that the award should be reduced by \$4,309.03 by reason of the ineligibility of the non-Canadian legatees.

I agree with the opinion of the learned Deputy Commissioner that this Commission is not in a position to recommend the shares of the award which should be paid to the individual eligible beneficiaries, but that the aggregate award as reduced by the foregoing apportionment should be paid to The Royal Trust Company for distribution among the eligible beneficiaries in accordance with the applicable law of Quebec.

There remains the contention of Mr. Claxton that the award recommended for expenses should not be subject to reduction on account of the ineligibility of two of the claimants. I consider that this contention is a sound one. The expenses incurred in establishing the claim are the same irrespectively of the number of eligible claimants involved.

Having reviewed the Deputy Commissioner's reports, I approve them without variation and I accordingly recommend that the claimant, The Royal Trust Company, as Executor of the will of Mrs. Alice Lauretta Bennett Hall, be paid:

(a) \$22,690.97 as an award for loss of property by the late Mrs. Hall and by her husband the late Charles Mylus Hall at Hong Kong, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b), and 5, and to bear simple interest from 1st January 1946 at 3% per annum; such awards to be held by the said Executor for distribution according to the terms of the will of the late Mrs. Hall, to the exclusion of the non-Canadian legatees Mrs. Florence May Fraser and Mrs. Lilian Eileen Kershaw.

(b) \$1,000.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish the claim, such payment to be in order of Priority No. 3(a), and to bear simple interest from an estimated mesne date of 1st January 1951 at 3% per annum.

Dated this 2nd day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9825

Re: Marshall

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefore.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted an argument in support of the contention that the Deputy Commissioner's recommendation should be reversed and an award recommended.

The principal contentions of the present argument are:

(a) That the rule stated by the learned Deputy Commissioner as precluding the Commission from recommending compensation to members of the armed forces for the loss of personal belongings taken with them on service is not a hard and fast rule, but merely a quotation from the opinion of the Advisory Commissioner on War Claims;

- (b) That there were hundreds, if not thousands, of instances where a member of the armed forces was compensated for personal belongings in World War II, not only as the result of enemy action, but losses which were incurred in transit on evacuation or repatriation;
- (c) That the late Mr. Marshall lost his personal belongings in the course of moving from one posting in Halifax, where he had married quarters, to another posting in St. John's, Newfoundland, where he was again to have married quarters. For that reason, it is contended, the present case is an exception from the general rule relied upon by the learned Deputy Commissioner.

As to ground (a), the argument overlooks the fact that the recommendations of the Advisory Commissioner, with a few slight amendments which do not affect the present case, were approved by Order of the Governor General-in-Council, and thereupon became the War Claims Rules, which are binding upon this Commission in the adjudication of its claims.

As to ground (b), it may be definitely stated that in no case has compensation been paid out of the War Claims Fund on recommendation of this Commission for the loss of personal belongings taken with him by a member of the armed forces. It is true that several branches of the armed forces had somewhat elaborate regulations providing for compensation within certain limit to members of the respective services for loss of personal belongings. For that reason, as I intimated in the case of *John F. O'Brien*, No. 5332, it is necessary to interpret the comments of the learned Advisory Commissioner by assigning to the last sentence the following meaning:

"I am informed that the understanding has always been that members of the armed forces, if they took with them personal belongings on service, did so entirely at their own risk except insofar as any loss might be compensable by the service regulations of their respective branches of the armed forces, and in my opinion losses of such belongings should not be compensable out of the War Claims Fund."

Members of the respective services were expected to familiarize themselves with the regulations referred to, and with the limits of compensation thereby provided. It is not disclosed whether Mr. Marshall's estate made any claim to the Department of National Defence or, if not, whether it is now too late for such a claim to be made. But, for the reasons mentioned by the learned Deputy Commissioner, it is not possible for this Commission to entertain a claim of that nature.

As to ground (c), I think there is some merit in this part of the argument, but it extends only to that portion of the lost goods which was specifically concerned in the change of posting from Halifax to St. John's. This would include the household furnishings, valued by the claimant at \$79.00, and possibly a portion of the deceased's personal belongings which he might be expected to have with him only by reason of his new posting. It must be remembered that the basis of compensation under the War Claims Rules is neither the cost, nor the replacement value, nor the value of the goods to the claimant, but the reasonable market value at 30th June 1939, less depreciation to the time of the actual loss. I would fix the value of the goods which the claimant had with him specifically by reason of his new posting at \$125.00, and I consider that he suffered a compensable loss in approximately that amount.

Apparently Albert Walter Marshall died intestate and without issue, leaving his widow as his sole beneficiary under the intestacy laws of Newfoundland. In view of the time elapsed since Mr. Marshall's death, the

smallness of the award, and the unlikelihood of any outstanding claims affecting his estate, I consider that the recommended award may properly be paid to his widow (now remarried) without the intervention of formal administration.

I therefore reverse the recommendation of the Deputy Commissioner, and I recommend that Mrs. Hazel Emma James be paid \$125.00 as an award for property lost by her former husband the late Albert Walter Marshall at the sinking of the S.S. *Caribou*, such payment to be in order of Priority No. 3(a) and to bear simple interest from 14th October 1942 at 3% per annum.

Dated this 22nd day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: See also Case No. 9670—*Re Warren*, and Case No. 9783—*Re Quinlan*.

CASE No. 9827

Re: Boytinck

Deputy Commissioner Bird has submitted to me his findings and recommendation, in the course of which he recommends disallowance of this claim on the ground that Mrs. Boytinck did not possess Canadian national status at the relevant times and is therefore not eligible to present a claim for compensation under the War Claims Rules.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and her counsel has submitted additional arguments in support of the contention that the recommendation of the learned Deputy Commissioner should be reversed, and that the claimant should be regarded as eligible to present a claim.

The War Claims Rules require continuity of national status to the extent that an eligible claimant must have been a Canadian citizen at the time of presentation of the claim, and must also have been a Canadian national (within the qualifications set forth on p. 24 of the Report of the Advisory Commission on War Claims) at the time of the act causing the loss or damage complained of. The latest materials before the learned Deputy Commissioner indicated that Mrs. Boytinck was not a Canadian citizen, and had not applied for Canadian citizenship up to 19th August 1954. The Department of Citizenship and Immigration now confirms the claimant's statement that she has received Canadian Citizenship Certificate No. 19339, dated October 3, 1955. Under Section 10(2) of the Canadian Citizenship Act, the claimant would apparently have been eligible to apply for citizenship in 1949. The Commission has applied, in several similar cases, the principle that the subsequent granting of a certificate of citizenship to which a claimant would have been entitled at the time of presentation, even though the certificate was not applied for or granted until later, is sufficient to satisfy the requirements of the War Claims Rules that a claimant must have been a Canadian citizen at the time of presentation of the claim.

There remains to be considered the question whether, at the time of the act causing the loss, this claimant was a Canadian national within the meaning of the War Claims Rules. She claims that she qualified as a Canadian pursuant to the provisions of paragraph (v)(a) on p. 24 of the Right Honourable Advisory Commissioner's Report. It must, however, be noted that sub-paragraph (a) of that qualification is enacted conjunctively with sub-paragraph (b) of the same qualification, and that the provisions of sub-paragraph (b) are themselves conjunctively related. The result of this form of enactment is that, in order to support her claim to Canadian status, the claimant must not only establish her

marriage and her own status of a British subject (both of which she has done) but must also establish that she had been lawfully admitted to Canada for permanent residence at the relevant time. As Mrs. Boytinck did not come to Canada until 1948, she obviously cannot qualify as a Canadian national at the time of her loss under paragraph (v)(a) and (b).

There is, however, the provision of Qualification (vi). The claimant's husband, J. H. R. Boytinck, was born in the Province of Alberta, in Canada. The learned Deputy Commissioner found that, although Mr. Boytinck went to Germany about 1925 and remained in Germany and Austria until after World War II, "it was his intention then to return to Canada but he deferred his return due to the current bad times in Canada and the fact that he was doing well in Germany". The husband at all times retained his Canadian status, and it seems clear to me that his intention to return at some time to Canada would preclude the inference that he had abandoned his domicile of origin for that of a European country. I am therefore of the opinion that Mr. Boytinck's domicile was in Canada throughout the period of World War II. It was obviously not necessary for the learned Deputy Commissioner to consider the bearing of this fact on Mrs. Boytinck's national status, as at the time of the hearing before him, she had not established that she was a Canadian citizen. In a number of similar cases, however, the Commission has applied the common law rule that a wife adopts the domicile of her husband, even though she herself has never resided in the country of that domicile. This principle would qualify Mrs. Boytinck as a Canadian national under the provision of Qualification (vi) on p. 24 of the Report of the Advisory Commission.

I therefore find that this claimant was a Canadian within the meaning of the War Claims Rules at the time of the act causing her alleged loss or damage, and that she was a Canadian citizen within the meaning of the Rules at the time of presentation of her claim (technically 23rd October 1952).

This claim will therefore be referred back to Deputy Commissioner Bird for consideration as to its merits.

Dated the 8th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

...I thereupon referred the claim back to Deputy Commissioner Bird for consideration as to its merits.

On 5th December 1957, the learned Deputy Commissioner submitted to me his revised report and recommendation, with his reasons therefor. The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified her, pursuant to the provisions of Rule of Procedure No. 20, that it was necessary for me to make my recommendation subject to deduction of any amount which she might receive, or might be deemed to have received, from the West German authorities. The claimant has indicated that the maximum compensation available from that source will be relatively small and difficult to obtain. This contention, of course, will be taken into consideration in the fixing of the deductible amount; but, since undue delay would result from postponement of my recommendation until I am in a position to assess with reasonable certainty the possibilities of potential recovery of compensation from the alternative source, I therefore proceed to make my recommendation on the basis of

the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid. . .

Dated this 27th day of August, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9829

Re: Shaw

...1. For passage to Crete—\$150.00: In respect of this item Captain Shaw states that he was taken from Crete for internment in Germany and should have been returned to Crete by the German Government but was sent as far as England only. I observe that on August 15, 1955, he was advised by this Commission that his claim for his fare to Crete is not compensable under the War Claims Rules. I agree that such is the case. The position of Canadians in foreign countries which either became enemy or enemy-occupied upon or after the outbreak of war is normally that legitimately they may be interned and their property sequestered. The Rules provide that the costs incurred by interned Canadians in returning to Canada after their liberation from internment should be borne by themselves as in the normal case they would be returning to Canada eventually. In all such cases that have come to my notice the Canadians concerned have either paid their own return expenses directly or have repaid the Government of Canada the repatriation costs advanced to them. It is possible that Captain Shaw may have had no intention of returning to Canada but this would scarcely justify more favourable treatment being granted in his case than is provided for Canadians returning to Canada. For this reason this part of his claim must be disallowed. . .

... It is clear, therefore, that Captain Shaw was the sole and legal owner of the property from October 1, 1932, when it was purchased, until June 28, 1948, when it was sold.

I think I should add, also, that the question of ownership after 1941 is largely one of academic interest. There is no doubt whatever that Captain Shaw was the owner of the property when it was damaged by bombing in May, 1941, and when it was taken over by the German authority on June 1, 1941. In the agreement of sale the right to receive compensation for war losses was reserved to him. The house was completely furnished when it was taken from him in June, 1941, and only a small part of the furnishings was restored to him. He would therefore be eligible to claim compensation for the damage caused by bombing, for the loss of the household effects and for the damage done to the house during the period of occupation, and whether the sale was effective from 1942 or 1948 would not materially affect his right to such compensation. For the reasons stated, however, I am satisfied that the transfer of the property was not effected until 1948.

...I observe, however, that on August 15, 1955, Captain Shaw, was advised by this Commission that the only basis upon which this rental part of his claim could be considered would be if the rentals were collected by the enemy and not turned over to him. The Rule then referred to applies to cases in which the rentals have been collected by an enemy power and have not been paid over by it. This is a different case. Here the property was requisitioned or rented by the enemy power and a rental paid which the owner considers insufficient. There is, however, a Rule that applies to the circumstances of this case, and

that is that where the claim is for loss of use of a property after damage, destruction or sequestration or for the time when the owner was interned, and the property was restored undamaged after the war, there is no compensable loss. This rule is based on the principle that the real loss to a Canadian owner of property which was damaged, destroyed or sequestered in a foreign country arose after the war, and that there is no compensable loss where the property was restored undamaged. In the present case part of the property (the house) was restored in a damaged condition and the remainder (most of the household effects) was not restored at all. In these circumstances the owner is eligible under the Rules to be compensated for the damage done to the house and for the loss of the household effects. He cannot be compensated for loss of use but this will at least to some extent be offset by the interest allowable under the Rules. Captain Shaw's claim, therefore, in respect of the occupation period, is admissible only in respect of the damage actually caused to the property and the loss of the household effects, and for this reason I am obliged to recommend that his claim for rent be also disallowed . . .

. . . My findings, therefore, are that the claimant sustained a loss through war damages and the occupation of his house in Canea to the extent of \$1,204.34, and in respect of the loss of his household effects by reason of war operations to the extent of \$7,677.40. I find also that his claims in respect of his return passage to Crete from Germany, and for loss of rentals from his property in Canea, are not admissible under the Rules and I recommend that they should be disallowed.

As I have remarked earlier, this claimant has cooperated fully with this Commission in procuring the evidence necessary to establish his claim. In so doing he has been obliged to spend a sum of approximately \$500 to obtain the necessary evidence from Crete, and he has submitted vouchers establishing payment of these expenses. The Rule in respect of costs is that no expenses of establishing claims should be allowed except such reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling claimants to establish their claims as may be approved by this Commission. I am of the opinion that the expenses incurred by Captain Shaw in Greece for the purpose of establishing his claim were both necessary and reasonable, and I shall recommend that he be granted an award of \$500 in respect of these expenses. . .

August 17, 1956

(Sgd) JAMES FRANCIS, Q.C.

Deputy War Claims Commissioner

NOTE: Awards confirmed by Chief Commissioner, 11 October, 1956.

CASE No. 9830

Re: Evans

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further argument in support of the contention that each of the awards should be increased.

The principal arguments now advanced by the claimant are: (a) that the total amount received by the late Mrs. Evans from the estate of her deceased daughter Miss Steele, namely \$1,056.40, should not be deducted from the gross

compensation payable for the daughter's death; (b) that the awards should take into consideration the depreciation in Canadian currency between 1939 and the date of payment.

The second argument is easily disposed of. The War Claims Rules oblige the Commission to assess property losses (except in the Far East) in terms of 1939 values, and other losses in terms of the dates at which the actual losses were incurred. The Commission is precluded from making any allowance for inflation or depreciation of currency after the time of such a loss. In no case has this Commission recommended compensation for a loss factor resulting from inflation or depreciation of currency occurring between the time of loss and the time of payment.

There is, I think, merit in the claimant's contention that Mrs. Evans' benefit from the estate of her daughter should not be deducted *in toto* from the gross award. The Right Honourable Advisory Commissioner on War Claims recommended that property accruing to dependents by the will or intestacy of a deceased person must be "taken into account" in determining the pecuniary loss which the dependent has suffered from the death of the deceased, so that the recipient may be compensated on a balance of gains and losses for the injury sustained by the death.

The somewhat indefinite expression "taken into account" is, I think, intended to indicate that no specific formula of deduction will be applicable in all cases, but that the appropriate "account" will depend upon the circumstances of each individual case. It may be considered, however, that the fundamental principle underlying the deduction of benefits received by a dependent from the estate of the deceased is the acceleration of those benefits by reason of the occurring of death before the normal time. In other words, it is the difference between the value of the benefit at the time when it was received and the corresponding benefit which would probably have been received at a later date if the deceased had lived out his or her normal span of life.

The most usual set of circumstances in cases of death claims is where the breadwinner of the family, normally older than his wife or children or other dependents, has lost his life by an operation of war, and his surviving dependents have a longer expectancy of life than had the deceased at the time of his death. In that set of circumstances, the acceleration benefit comprises roughly the interest factor, and the formula applied by the Commission in each such case is the amount received by the dependent from the estate multiplied by 3%, multiplied by the number of years of life expectancy of the deceased, and the result capitalized as at the time of actual receipt of the benefit. Another method of reaching approximately the same result is to take the amount of the benefit at the time of its receipt, and subtract from it the then present value of the same amount or of such other amount as might reasonably have been expected to be received by the beneficiary at the end of the period of expectancy of life of the deceased. Where, however, the beneficiary has a shorter term of life expectancy than the deceased, the foregoing formula is not applicable.

In a case such as the present, the mother had a shorter term of life expectancy than had the daughter at the time of her death, and there was therefore no actual probability that the mother would ever have enjoyed a capital benefit from the daughter's estate if the daughter had lived out her normal period of life expectancy. This absence of probability is accentuated by the fact that Mrs. Evans died a little more than two years after the death of her daughter. Mrs. Evans' death therefore practically eliminated the possibility that either she, or her estate, would ever have received a capital benefit under the will or intestacy of Emma Blanche Steele. The situation therefore appears to be stated almost correctly by saying that Mrs. Evans received a capital benefit

from her daughter's estate in the sum of \$1,056.40, which she (or her estate) would never have received if Emma Blanche Steele had lived for the normal period of her expectancy of life.

There remains, however, the possibility that Miss Steele might not have married, had she lived out her life expectancy, and that some, at least, of the beneficiaries of her estate might ultimately have been (in some degree) the same individuals as those benefitted by the will of her mother. With this rather remote probability in view, I am disposed to estimate the acceleration value of the benefit received by Mrs. Evans from the estate of her daughter as being three-quarters of the amount received, rather than the total sum. This means that the deduction for acceleration would be \$792.30. Deducting this amount from \$1,985.50, we arrive at a net award on the death claim of \$1,193.20.

There should, I think, be a slight adjustment in the interest arrangement as to the death award for the benefit of Mrs. Evans' estate. She would be entitled to interest on the gross award of \$1,985.50 from the date of her daughter's death until the mesne date of receipt of benefits from her daughter's estate, which I would fix at 9th September 1940.

As to the failure of Miss Steele's estate to claim compensation from the United Kingdom Government for loss of her personal belongings, I do not wish to be taken as subscribing to the opinion of the learned Deputy Commissioner that neglect or default in the making of a claim against an alternative source of compensation implies on the part of the claimant some knowledge of the source from which compensation could be obtained. In almost all cases, the Commission has held that there is an onus on the claimant to discover, by reasonable inquiry, what alternative sources of compensation (if any) are available. The single exception to that rule is the case of the gratuitous payments made to "*Athenia*" victims by the Government of the United Kingdom. I would agree with the learned Deputy Commissioner that this claimant should be excused for failure to make the alternative claim, but I would base that decision on the reason set forth in CASE NO. 2017—*Miss Gladys M. Crowley*.

With the foregoing variations, I approve the report of the Deputy Commissioner, and I therefore recommend that there be paid the following sums for distribution in accordance with the terms of the respective wills concerned:

(a) To Arthur W. Rogers, as Executor of the estate of Emma Rogers Steele Evans, \$1,193.20 as an award for pecuniary loss suffered by the late Mrs. Evans through the death of her daughter, Emma Blanche Steele, at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. (1-2) and to bear simple interest from 3rd September 1939 at 3% per annum;

(b) To Arthur W. Rogers, as Executor of the estate of Emma Rogers Steele Evans, simple interest on \$792.30 at 3% per annum from 3rd September 1939 to 9th September 1940, being the estimated mesne date of the receipt of benefits from the estate of Emma Blanche Steele, such payment also to be in order of Priority No. (1-2).

(c) To Arthur W. Rogers, as Executor of the estate of Emma Blanche Steele, \$450.00 as an award for loss of property by the late Miss Steele at the sinking of the S.S. "*Athenia*", such payment to be in order of Priority No. 3(a) and to bear simple interest from 3rd September 1939 at 3% per annum.

Dated this 29th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9834

Re: Stoddart

...The claimant is naturally disappointed that the recommended award is not sufficient to enable her to replace the lost articles with goods of a similar nature at presently prevailing prices. It must, however, be remembered that the War Claims Fund does not aim to provide full compensation in the sense of replacement value. The compensable value which the Commission is bound to apply is the reasonable market value on a pre-war scale. It is the experience of the Commission that the market value of consumer goods, however new and in however good condition they may have been, was substantially below the actual cost or the actual value to the owner. I have carefully examined the various inventories filed by the claimant in the present case, and am of the opinion that the estimate reached by the learned Deputy Commissioner Bird is fully in line with estimates of value reached in other similar cases. As the learned Deputy Commissioner's estimate was reached after careful consideration on the basis of an oral hearing, it would be improper for me to attempt to vary it...

Dated this 29th day of November, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9840

Re: Nielsen

On the basis of documentary evidence on file, and of oral evidence taken before Special Examiner Michael A. Havelock, a report was submitted to me on 14th March 1957 by Deputy Commissioner Francis.

The learned Deputy Commissioner found that the claimant was a Canadian national at all relevant times and is therefore eligible to claim compensation under the War Claims Rules. He was not, however, satisfied with the available evidence of ownership of the property concerned or of quantum of war damage sustained. He therefore recommended that the claim remain in abeyance until more cogent evidence could be available, for instance in the form of a disposition of the claim pending before the German War Damage authorities.

Unfortunately, and apparently through no fault of the claimant, the claim in Germany has not yet been settled, and there appears to be no prospect of its early determination.

The only possibly valid portion of the claim is that which concerns the claimant's alleged one-quarter interest in a Berlin apartment house known as No. 4 Sachsenwaldgasse. Though the evidence of the claimant's ownership and of the extent of damage to the property is far from being satisfactory, I am of the opinion that an inference may properly be drawn that Mrs. Nielsen was the owner of a one-quarter share of the property in 1943, when it was damaged by operations of war, and that the quantum of the war damage may fairly be estimated at \$16,000.00. Of that amount, the claimant would be entitled to a one-quarter share, or \$4,000.00.

As to expenses, it must be remembered that the War Claims Rules do not permit reimbursement of legal or other costs incurred in Canada. It is, however, apparent that the claimant incurred some expense in Germany in connection with the preparation of her claim. It is difficult to assess with accuracy the amount which was expended in procuring evidence relevant to the branch of the claim which has been established, but I would estimate such amount in the sum of \$50.00.

I accordingly recommend that the claimant be paid:

(a) \$4,000.00 as an award for damage to property in West Berlin, such payment to be in orders of Priority Nos. 3(a) and 3(b) and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$50.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest but not to be taken into account for priority purposes.

As I have already indicated, this is a case in which payment in respect of the claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

Dated this 6th day of May, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9842

Re: Balcer

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

On examination of the facts in this case, however, I have come to the conclusion that, in addition to the award recommended by the learned Deputy Commissioner, the claimant is entitled to further consideration in respect to the computation of satisfaction otherwise provided for. The learned Deputy Commissioner has converted the amounts received from The Netherlands Government into Canadian funds as at 30th June 1939, and has then deducted the Canadian equivalent so as to result in adjustment of interest from the same date.

The formula adopted by the Commission is that compensation from an alternative source should be converted into Canadian currency as at the date or dates of its receipt, and that interest in respect of such alternative compensation should also be adjusted as from the date or dates of payment. The Department of Finance has certified that the Canadian equivalents of the amounts in Dutch florins converted at the dates of their respective payments would total \$1,695.04.

With the foregoing variation, I approve the report of the Deputy Commissioner.

I therefore recommend that the claimant be paid \$4,430.93 as an award for loss of property in The Netherlands, such payment to be in orders of Priority Nos. 3(a) and 3(b), and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$1,695.04 received from the Government of The Netherlands, with interest adjustment from an estimated mesne date of 1st September 1951.

Dated this 26th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9853

Re: LaFleche

... The learned Deputy Commissioner finds that the late General LaFleche "who was not in the habit of giving much attention to matters of this kind, would have been equally unaware that he could file a claim in France". Also "that General LaFleche had not even inquired of the Government of Canada in respect of compensation for his loss". The learned Deputy Commissioner concludes that if the late General was completely unaware that he could file a claim with the French authorities, the present claimant should not be penalized for his neglect to do so. In all similar cases, I have held that ignorance of the availability of an alternative source of compensation, resulting from the absence of any inquiry whatever, does not excuse the claimant for his failure to avail himself of compensation otherwise provided for. This is therefore apparently a case in which payment in respect of the claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid...

Dated this 26th day of March, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9854

Re: Roggenburg

... Under The War Claims Rules, allowable costs are strictly limited to reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling claimants to establish their claims. In the present case, the claimant was obviously obliged to incur some expenses abroad, but the evidence does not establish the exact amount of such expenditures. He apparently made a voluntary payment to some of his friends who performed gratuitous services for him, and paid a substantial amount for law stamps. He also undertook a voyage to Austria, but the Commission has invariably rejected

claims for reimbursement of travelling expenses incurred by claimants. On a careful consideration of the materials on file, I would estimate the total compensable expenses at \$100.00, and would recommend that the claimant be reimbursed to that extent...

Dated this 8th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9857

Re: N. M. Paterson & Sons Limited

...While there appears to be some merit in the claimant's contention, I should hesitate to accept the admittedly expert testimony of Mr. Pierot at its full face value. In my opinion, the actual market value of the ships might properly be placed somewhere between the valuations (based on insurance) adopted by the learned Deputy Commissioner Hyndman and those estimated by Mr. Pierot. As the intervening field is one which does not admit of exact mathematical calculation, I am inclined to fix valuations midway between those of the Deputy Commissioner and those of the expert appraiser. This basis would, however, work against the interest of the claimant in the case of the Kenordoc, as the estimate of the claimant's expert is lower than the valuation fixed by the Deputy Commissioner, and must therefore be adopted...

Dated this 11th day of December, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9859

Re: Young

...As to the award for loss of property, the late Mary Catherine Young apparently died intestate; and I agree with the evident conclusion of the learned Deputy Commissioner Francis that, in view of the smallness of the award, the length of time elapsed, and the unlikelihood of any outstanding claims affecting the estate, the award may properly be paid to the claimant (as sole beneficiary under the laws of Newfoundland), without the intervention of formal administration.

Strictly speaking, there should be deducted from the capitalized value of the annuity recommended by the learned Deputy Commissioner as a "death" award, the acceleration value of the amount of the property award. Owing, however, to the smallness of the property award, it is arguable that the claimant might have received a larger property benefit from the deceased's estate if she had lived longer.

For that reason, as well as for the reason that the amount of the "death" award is relatively modest, I would recommend that in this case no deduction be made on account of accelerated property benefit received...

Dated this 3rd day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

...I have reached the conclusion that in the present case there is evidence that the death of the deceased caused a general dislocation of arrangements in the family to which the deceased belonged. As a consequence there appears to have been a resulting pecuniary loss in addition to that for which specific compensation has been awarded pursuant to my previous Report. It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the additional amount of \$500.00...

Dated this 11th day of December, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9860

Re: Acker

This claimant claims, jointly with her husband Walter Raymond Acker, compensation for loss of property in Belgium alleged to be due to war operations. A preliminary question arises as to the national status of the claimant Lea Acker, who was born in Belgium and was not admitted to Canada for permanent residence prior to 6th July 1940. At the time of her marriage on 18th October 1916, the claimants were in England, where the husband was serving in the Canadian Army Medical Corps. Subsequently, the husband was employed in Belgium as a representative of General Motors Limited. He accompanied his wife and daughter to Canada in 1940, and served with the Canadian Legion War Services from September 18 in that year until January 1946. In the following month he returned to Belgium to resume his employment with General Motors.

In addition to the periods spent in the Canadian Forces in World War I, and the period during which Mr. Acker served with the Canadian Legion War Services in World War II, he and his wife visited Canada in 1923, 1951, and 1954, for the purpose of visiting relatives in Canada. Mr. Acker maintains that his domicile is still at Nictaux Falls in the Province of Nova Scotia, the place of his birth.

The circumstances of the case strongly support Mr. Acker's contention that he has at all times retained his domicile of origin in Canada. That being the case, his wife, who became a British subject on their marriage, would automatically adopt her husband's domicile at the time of their marriage in 1916. I am therefore of the opinion that throughout World War II Mrs. Acker was a British subject having a common law domicile in Canada. She is certified by the Department of Citizenship and Immigration as having acquired the status of Canadian citizenship within the meaning of Section 9(1)(d) of the Canadian Citizenship Act on 1st January 1947.

I accordingly recommend that the claimant Mrs. Lea Acker be considered as having had Canadian status within the meaning of the Canadian War Claims Rules at all relevant times, and therefore as being eligible in this respect to prosecute a claim against the Canadian War Claims Fund.

Dated this 24th day of October, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimants have been furnished with a copy of the Deputy Commissioners' report. I have also notified them, pursuant to the provisions of Rule of Procedure No. 20, to the effect that since the date of the Deputy Commissioner's original recommendation, further information has become available to the Commission regarding the amounts of compensation awarded by the Belgian authorities. This new information requires some modification of the awards computed by the learned Deputy Commissioner.

The substance of the proposed modifications may best be explained by quoting from my notice to the claimants dated 4th February 1959:

"The formula applicable in such cases is the 1939 value of the property lost (with deduction for depreciation up to the time of actual loss), plus simple interest from 1st January 1946, minus the Canadian equivalent of compensation received from other sources computed at the rate of exchange prevailing at the times of the other awards, with interest adjustment on the alternative awards from their respective dates.

re: *Claim of Mrs. Lea Acker*

The Belgian Ministry of Public Works and Reconstruction has advised us that on 12th November 1957 Mrs. Acker received 279,000 francs in bonds, reimbursement of 1,260,000 francs on rebuilding credit, and 56,563 francs as a credit at her disposal on furnishing proof of the use made of the said balance.

The Canadian equivalent of the Belgian award is \$30,603.41. It may seem strange that this amount exceeds the capital of the compensation recommended by the Deputy Commissioner for the same items. The discrepancy is due to the fact that the Belgian award is computed on replacement cost, whereas the award from the War Claims Fund is based on 1939 market values. On the other hand, it will appear that when the interest is computed on the Canadian award, there will remain a substantial balance going to Mrs. Acker.

The application of the usual formula will give her \$26,492.00, plus simple interest at 3% from 1st January 1946 to 12th November 1957, (or roughly \$9,000.00), minus \$30,603.41.

re: *Walter Raymond Acker*

The restatement on the basis of the usual formula will give approximately the same result as that estimated by the learned Deputy Commissioner. Mr. Acker would receive \$23,137.00, with simple interest at 3% from 1st January 1946 to (say, 1st July) 1948, minus \$5,153.26 received from the Office Mutuelle d'Aide, plus simple interest at 3% on the balance of capital from 1948 to 24th September 1957, minus \$5,896.19 received from the Belgian Government, plus interest on the balance of capital to date."

The claimants have expressed themselves as accepting the modified awards on the basis outlined in the notice from which I have quoted.

With the suggested modifications, I therefore approve the report of the Deputy Commissioner.

I accordingly recommend that there be paid to the claimants respectively as awards for losses of property in Belgium, the following amounts:

(a) to the claimant Walter Raymond Acker \$23,137.00, such payment to be in orders of Priority Nos. 3(a) to 5 inclusive, and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$5,153.26 received from the Office Mutuelle d'Aide, with adjustment of interest from an estimated date of 1st July 1948; and subject to further deduction of \$5,896.19 received from the Government of Belgium, with adjustment of interest from 24th September 1957, (being the mesne date of such receipt).

(b) to the claimant Mrs. Lea Acker \$26,492.00, such payment to be in orders of Priority Nos. 3(a) to 5 inclusive, and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$30,603.41 received or available from the Government of Belgium, with interest adjustment from 12th November 1957.

Dated this 31st day of March, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9868

Re: West

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted further argument in support of the contention that the Deputy Commissioner's recommendation should be reversed and an award recommended.

The claimant stresses particularly the unfairness resulting from the Commission's requirement of substantial evidence of ownership, loss and value of property in Hungary, under circumstances which make it impossible for such evidence to be now obtained. The claimant contends that, if this requirement had been brought to his attention in the years immediately following the war, he could have obtained the necessary documents and corroboration, but that intervening events have made the procuring of such evidence impossible.

It must be remembered that payments under the War Claims Rules are in the nature of *ex gratia* awards, and that until 1952 it was not certain what funds, if any, would be available for the compensation of war losses by Canadians. It was therefore necessary to defer the commencement of adjudication until the existence and extent of available funds could be estimated with reasonable certainty. This Commission was not appointed until 23rd October 1952, and is bound to conduct its proceedings in accordance with the War Claims Rules, which place on each claimant the necessity of establishing his ownership and loss of property by reasonably convincing evidence.

The claimant suggests that the best he could now possibly procure might be an affidavit of his former representative in Hungary respecting the disposition of his property there. In the circumstances, I am doubtful if such an affidavit, even if obtainable, would sufficiently clarify the unusually difficult situation prevailing in connection with the present claim. The claim is for the loss of goods which the claimant left in Hungary when he came to Canada in 1924. Apart from the items of jewellery, which under the War Claims Rules and the Rules of Procedure require substantial corroborative evidence as to

ownership, value and loss, the claimant states that he left his personal belongings stored in a basement under the bachelor apartment which he had occupied. The continued existence, condition, and value, as well as the circumstances of the loss, of goods left in a basement in Hungary twenty years before their alleged confiscation would require evidence of the most complete and cogent nature.

Having reviewed the Deputy Commissioner's report, I cannot see how he could have done otherwise than to recommend the disallowance of the claim.

I therefore approve the Deputy Commissioner's report without variation, and I recommend that this claim be disallowed.

Dated this 1st day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9869

Re: Kahn

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, Messrs. Beckett and Beckett, his solicitors, have submitted an elaborate and well-reasoned written argument, supplemented by an oral presentation made by Mr. G.G. Beckett before me, in support of the contention that the Deputy Commissioner's recommendation should be reversed and an award granted.

The claim respecting property No. (2), as it is referred to in the Deputy Commissioner's Report, arising from alleged inadequacy of compensation under a pre-war municipal expropriation obviously cannot be entertained as a loss compensable under the War Claims Rules.

As to damage to property No. (1), Messrs. Beckett rely principally on the contention that the Commission should determine the ownership of the damaged property at the time of the damage on the basis of the law respecting its title at the date of the enactment of the War Claims Rules. In other words, the Commission should recognize the retroactive effect of Military Law No. 59 and other post-war enactments and measures so as to nullify *ab initio* the effect of pre-war confiscation by the German State.

A similar argument has been presented in such cases as CASE No. 1486—*Re: Whitehead*, and CASES Nos. 9890 and 9891—*Re: Lourie*. After careful consideration of the merit of Messrs. Beckett's arguments, I am of the opinion that the result must be the same in the present case.

I feel bound to follow the formula of interpretation of the War Claims Rules adopted by the Commission as the result of careful consideration at a series of meetings of the Deputy Commissioners, and subsequently applied in such cases as CASE No. 1486—*Re: Whitehead*, CASE No. 9770—*Re: West*, CASE No. 9798—*Re: Mahler et al.*, and CASES Nos. 9890 and 9891—*Re: Lourie*. That formula is to the effect that the ownership of a claimant must be determined as at the time of war loss or damage; that previous confiscatory measures enacted and carried out by a government recognized by Canada as the *de facto* government of the country of the *situs* must be recognized as divesting the ownership of a claimant; and that the Commission cannot give effect to post-war restoration measures as retroactively revesting the ownership at times including the date of war loss or damage.

I am free to admit that this formula of interpretation is not clear of difficulties, but I have most carefully considered and reconsidered it during the past 17 months, and I am still convinced that, on balance, the interpretation recommended by the Deputy Commissioners is the proper one, and that I have no alternative but to confirm disallowance of the present claim.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I accordingly recommend that this claim be disallowed.

Dated this 28th day of July, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9870

Re: Heller

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. She has subsequently presented an unsworn statement from a "lawyer and notary" in Dresden furnishing some supplementary information regarding the property concerned.

The certificate indicates that the property was "most likely destroyed on 13/14 February 1945 by a bombing attack." It goes on to say that Mr. Rudolf Basch (the claimant's father) was recorded as owner; that the ownership of the property was transferred to the German Reich during the war; that there were a mortgage and two annual rent charges on the property; that the property now belongs to the City of Dresden, which is rebuilding it.

The certificate unfortunately does not assist the claimant, but rather detracts from any speculations which might have been made in her favour. The property was apparently owned by her father and was transferred to the German Reich during war time, presumably before she became a Canadian national on 8 December 1944, and certainly before the supposed bombing in February 1945. At the time of the bombing, neither the claimant nor her father was the owner of the property concerned, and the claimant can therefore not be held to have suffered a compensable loss under the provisions of the War Claims Rules.

I have accordingly no alternative but to approve the report of the Deputy Commissioner without variation, and I recommend that this claim be disallowed.

Dated this 16th day of June A.D., 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9871

Re: Lee

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

It would appear that this claimant received exceptionally severe treatment during his period of custody as a prisoner of war. There is evidence that he was obliged to work in a coal mine in Poland for about three months, and after a short hospitalization for diphtheria was transported by box car for two days. Also that he was forced to do hard labour at an old brick factory for two weeks, with starvation diet and kickings and beatings with rifles of the guards. The official D.V.A. record indicates that he suffered from malnutrition, gastro-enteritis, and loss of weight.

I am of the opinion that the evidence in this case justifies an award in the normal maximum amount of \$267.00.

With the foregoing variation, I approve the report of the Deputy Commissioner, and I recommend that the claimant be paid \$267.00 as an award for maltreatment of himself whilst a prisoner of war in Europe, such payment to be in order of Priority No. (1-2).

Dated this 11th day of December, A.D. 1956.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9873

Re: Voros

This claim is for an award of compensation in the sum of \$1,082 for damages to real and moveable property located at Nagyatad, Hungary.

... The evidence produced regarding the war damages sustained by the property described as No. 66 Gyar Street is somewhat conflicting. The estimates of the builder, Janos Molnar, show that the damages were caused by grenades, land mines and air pressure and that certain window frames were removed by the Germans. The claimant's grandfather, however, in a letter dated February 1, 1947, to the claimant's father, states that "the entire damage caused by the war was two near hits from field pieces and other (damage) was caused to the roofing from small arms fire." It would seem, therefore, that any damage that would have been caused to the property by two near hits from field pieces and to the roofing by small arms fire would have been slight. In the same letter the grandfather also states:

"The Russians came here in 1945 and occupied the house rent free till December and stole everything removable. They broke open the attic and stole 18 grain bags and 30 kilogrammes of flour... The Russians broke up cement flooring in the kitchen by cutting wood on it. They removed the entire electrical installation from the house, also door handles with everything else made of brass... Later the Russians smashed bedsteads and chests of drawers and used them for kindling... When these troops finally did leave the area they took away five mattresses as 'cost of liberation'."

It would seem from the above that most of the damage was caused by the Russians rather than the Germans. If such is the case it would have been sustained after the German withdrawal, that is to say, toward or after the end of the war. This seems to be confirmed by the statement of the grandfather to the effect that the Russians came in 1945 (he does not say in what month) and remained until December of that year. In these circumstances, it is impossible to say when the damages were sustained. As I have already observed, the damages from actual war operations must have been slight and the property could not then have been seriously damaged. I cannot understand, moreover, why the Germans should remove window frames from their settings unless

there was some reason for them doing so that has not been explained. That the property was not seriously damaged by war operations is shown by the evidence that it was subsequently occupied by five families and two sub-tenants. The Commission has been informed that Somogy county, which includes the city of Nagyatad, was occupied by the Third Ukrainian Army at the beginning of 1945 and remained in Russian hands. This information, however, is of little help in establishing when the losses in respect of which the claimant seeks compensation were actually sustained. It is for the claimant to establish that the damages were sustained during the period of the war and not later than May 8, 1945, and this he has failed to do.

Having very carefully considered all of the circumstances I am regretfully obliged to find that the claimant has failed to establish his claim and, this being the case, I am obliged to recommend that it should be disallowed.

I observe that as part of his claim the claimant claims compensation for the theft and destruction of certain unspecified furnishings. No evidence has been produced as to what these furnishings consisted of nor when they were stolen and destroyed. It may be that these are the furnishings referred to by the grandfather in his letter of February 1, 1947, but as I have already remarked it is impossible from the evidence before us to establish whether these happenings occurred prior to or subsequent to May 8, 1945, the date of the termination of hostilities. I am therefore obliged to recommend that this part of the claim should also be disallowed.

December 4, 1956.

JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

Note:—Disallowance confirmed on review by Chief War Claims Commissioner, 18th March, 1957.

CASE No. 9875

Re: Frost

Deputy Commissioner Francis has submitted to me his findings and recommendation on this claim, with his reasons therefor.

As the claimant's father was born in Canada and had not become an alien at the time of the claimant's birth, and as the claimant was a minor throughout the period of her internment, she was at that time a Canadian under the provision of qualification (ii) (a) on page 24 of the Report of the Advisory Commission on War Claims. She is also certified by the Department of Citizenship and Immigration to be a natural-born Canadian citizen, pursuant to Section 4 (1) (b) of the *Canadian Citizenship Act*. She therefore had Canadian national status at all relevant times.

Having reviewed the Deputy Commissioner's report, I approve his recommendation without variation, and I recommend that the claimant be paid \$1,128.00 as an award for maltreatment of herself whilst a civilian internee in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

It is noted that the claimant's father and family are indebted to the Government of Canada in the sum of \$2,546.51, re advances for subsistence and transportation expenses during World War II. This Commission has no jurisdiction to determine how much of that indebtedness is applicable to the present claimant.

Dated this 19th of February, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9876

Re: MacDonald

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified the claimant, under the provisions of Rule of Procedure No. 20, that I consider it necessary to reverse the Deputy Commissioner's recommendation, and to recommend disallowance of her claim for the reasons set out hereinafter. The claimant has not submitted any presentation in reply to the notice of intended disallowance.

The learned Deputy Commissioner obviously entertained considerable doubt as to whether the claimant could be considered a Canadian within the meaning of the War Claims Rules at the time of her internment. He considered, however, that he was bound by an earlier decision of the Commission in CASE No. 9504—*Re: Alice Renee Hackett*, which had been followed in CASE No. 1469—*Re: Marjorie Barton*. But it will be seen that the cases of Mrs. Hackett and Mrs. Barton were entirely different from the case of the present claimant. Mrs. Hackett's husband was a British subject domiciled in Canada during the time of her loss, and she was therefore considered by the Commission to have adopted her husband's domicile at common law, and consequently to have been eligible as a Canadian national under Qualification (vi) on p. 24 of the Report of Advisory Commission on War Claims.

The present claimant was born in the Philippine Islands in 1905, and before her marriage was a Spanish national. Her husband was born at Summerside, Prince Edward Island, and the claimant is certified by the Department of Citizenship and Immigration to have become a British subject through her marriage to a natural-born Canadian in 1928. As she was admitted to Canada for permanent residence on 7th May 1945, the Department further certifies that on 19th June 1953 she had the status of a Canadian citizen under the provisions of Section 9 (i)(c) of the *Canadian Citizenship Act*.

The claimant's husband went to live in the Philippine Islands in 1924. With the exception of a few months spent in the United States and Canada in 1937, and a short visit to Canada in May 1945, he resided in the Philippines from 1924 until August 1945, when he became a permanent resident of the United States. In a letter to the Secretary of State for External Affairs dated 18th September 1947, Mr. MacDonald stated he was domiciled in the Philippine Islands for approximately 20 years. His status at the time of the claimant's internment was apparently that of a native-born Canadian with domicile in the Philippine Islands.

As Mrs. MacDonald had not at that time been admitted to Canada for permanent residence; and as she cannot be considered to have then adopted her husband's Canadian domicile at common law, because he was not domiciled in Canada; she cannot be eligible as a Canadian national at the time of her internment by reason of any of the qualifications laid down on p. 24 of the Report of the Advisory Commissioner.

In order to be considered a Canadian, within the meaning of the War Claims Rules, at the time of her internment, the claimant must not only have been a British subject, but either (a) she herself must have been landed in Canada for permanent residence, or (b) she must have adopted at common law a domicile in Canada possessed by her husband at the time. Neither of these requisites appears to have been complied with, as the claimant had never come to live in Canada and, according to her husband's own statement, he was domiciled in the Philippines for 20 years. The claimant's status at the time of internment would apparently be that of a British subject domiciled in the Philippine Islands.

For the foregoing reasons, I see no alternative but to reverse the recommendation of the learned Deputy Commissioner, and I therefore recommend that this claim be disallowed.

Dated this 14th day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9878

Re: St. Redempteur

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials, though expressing some disappointment that the recommended award is smaller than the amount which the claimant had hoped to receive.

Some little difficulty is caused in the present case by the state of the titles to the damaged properties, which the learned Deputy Commissioner accepts as being sufficiently established. The legal title was apparently not vested in the claimant owing to a French law in force in Indo-China which prevented Religious Corporations, unless incorporated under French law, from holding the title to immovable property. For that reason, the formal title to the property was held by an Administrative Council constituted of the Bishop of Saigon, and two Indo-Chinese Fathers of the Order.

The case should, I think, be distinguished from CASE No. 3061—*Re: Dominican Sisters*, in which I held that the claimant had not established a legal or equitable title to the property lost or damaged in Japan. In that case, however, although the claimant had made substantial monetary contributions towards the Mother Congregation of the Dominicans in France for the purpose of building up and maintaining missionary properties and carrying on missionary enterprises, it was evident that such contributions were not earmarked for acquisition of ownership in the property concerned or in any specific property. In the present case, on the other hand, not only had the claimant congregation advanced the money for the purchase of the specific properties concerned, but it was regarded throughout as being the actual owner of the property in a relationship analogous to equity. This viewpoint is to some extent confirmed by the fact that on 7th February 1941 the General Government of Indo-China issued an Ordinance substituting three Canadian members of the claimant Order for the previous members of the Administration Council. Whether, or not, the Government of Indo-China had constitutional authority to issue such an Ordinance, its fact is evidence of the prevailing understanding respecting the ownership of the properties concerned. It also appears that the claimant Order presented a claim for compensation in Indo-China, but that the claim was rejected on the ground that the property was owned by the Redemptorists, who were a foreign organization.

I therefore agree with the conclusion of the learned Deputy Commissioner that the title to the damaged properties has been sufficiently established to conform with the intention of the War Claims Rules.

As I have already indicated, the claimant presented, or at least proposed, a claim for compensation from the Indo-Chinese authorities. Legislative provision had been made to compensate for war losses sustained in Indo-China during World War II, but such compensation was apparently not available to Canadian claimants because the Franco-Canadian Agreement on War Damages of 27th September 1947 does not apply to Indo-China. I am therefore inclined to the

view that the claimant was not eligible for compensation from a source other than the Canadian War Claims Fund, and that therefore no deduction may be made for compensation otherwise provided for.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$32,000.00 as an award for loss of property in Indo-China, such payment to be in orders of Priority Nos. 3(a) to 6(a) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 8th day of December, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASES No. 9879 AND 9901

Re: Canadian Pacific Railway Company

Deputy Commissioner Hyndman has submitted to me four reports on the above noted claims, setting forth his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of each report and has advised that the awards recommended are satisfactory.

A question might arise as to the availability of "satisfaction otherwise provided for" in respect of the losses occurring in West Germany and in the Philippines. Apparently, however, juridical persons such as corporations are not eligible to claim in West Germany (Law of Equalization of Burdens, part III, article 229, paragraph (2)), and corporations organized under the laws of foreign countries are not eligible to claim from the Philippine Commission. There would apparently, therefore, be no alternative compensation available in any of the countries in which the claimant's losses arose.

Having reviewed the reports of the Deputy Commissioner, I approve them without variation.

As the Canadian Pacific Steamship Company is a wholly-owned subsidiary of the claimant, but is not a Canadian company within the meaning of the War Claims Rules, the Steamship Company is not eligible to press a claim in its own right. All the claims must therefore, as the learned Deputy Commissioner intimated, be consolidated for purposes of priority rating.

The consolidated awards may be summarized according to the following tabulation:

Canadian Pacific Railway

Germany	\$18,694.73	
Poland	5,000.00	
Hong Kong	2,000.00	
Philippines	2,100.00	
China	2,000.00	
		<hr/>
		\$29,794.73

Canadian Pacific Steamship Company

Hong Kong	\$32,275.71	
less adjustment of conversion	28.93	
		<hr/>
		32,216.78
Supplementary award		35,225.00
Additional supplementary award		2,100.00
		<hr/>
		<u>\$99,336.51</u>

I accordingly recommend that the claimant, Canadian Pacific Railway Company, be paid \$99,336.51 as an award for loss of property on land in Europe and in the Far East, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b), 5, 6(a) and 6(b) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 11th day of December A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9880

Re: Brault

...The Claimant ridicules the suggestion that the effects of privations suffered during a period of "escape" cannot form the basis of a claim for compensable personal injury. Such, however, is the provision of the relevant law. In order to be compensable under the War Claims Rules, personal injury must have been caused by maltreatment or by an actual operation of war; privations during escape are neither, and therefore, cannot found a claim for compensation. . .

...I have very carefully reviewed the facts of this case, both as presented in the transcript of evidence taken before Special Examiner Nicol, and as presented in the Claimant's very interesting book entitled "De Rome à Montreal par le Chemin le Plus Long". I have come to the conclusion that the learned Deputy Commissioner assessed with reasonable equity both the extent of maltreatment inflicted on the claimant during his internment, and (subject to the foregoing observations) its proportional aggravation of his subsequent alleged incapacities. . . .

...In view, however, of the amelioration of conditions after escape, I am disposed to revise upwards the learned Deputy Commissioner's estimate of the proportion in which maltreatment contributed to the claimant's hospital and medical expenses. I would allow \$400.00 in addition to the "solatium" awarded for maltreatment.

As to the proposed deduction of alternative compensation which the claimant might have secured from the French Government, he questions the "obligation of the French authorities to make good the damages caused by allied bombardments". It is not so much a question of obligation, as of arrangement for distribution of reparations by the countries in which loss or damage occurred. Analogous arrangements have been made in West Germany, The Netherlands, Belgium, Malaya, and The Philippines, and in each case the Commission has recommended deduction of the compensation which an eligible claimant received, or might have received by reasonable diligence, from such an alternative source. I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the property claim on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid. . . .

Dated this 17th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9881

Re: Franciscaines

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor. The learned Deputy Commissioner recommends payment of \$3,000.00 for movable property in the Mission at Ichang-Hupeh in China, and \$600.00 for construction materials confiscated by the Japanese from the Mission at Nanchlaing in Upper Burma.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and Counsel now properly points out that the Canadian equivalent of the original amount claimed for the loss in Burma, namely 3,100 rupees, was approximately \$1,030.00 on the basis of the rate of exchange prevailing at 30th June 1941.

The learned Deputy Commissioner apparently accepted the evidence which went to establish the actual value of the goods lost at 3,100 rupees. He also accepted the claimant's own conversion of that amount into Canadian dollars, as appearing in the Statement of Claim, at \$620.00. The error is apparently, therefore, one of conversion, and not one of lack of evidence. It would therefore appear proper that the Deputy Commissioner's finding should be revised by allowing the correct Canadian equivalent of the loss established, namely \$1,029.98...

Dated this 30th day of May, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9888

Re: Angeloff

Deputy Commissioner Hyndman has submitted to me his findings and recommendations, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, she has protested that the award recommended is inadequate to compensate her for the war losses which she sustained. She particularly stresses the contention that she has paid out \$650.00 for cost of documents and legal fees incurred in Bulgaria in addition to incurring expenses for the execution of a power of attorney there, and expenses for lawyers' fees in this country.

The unfortunate situation in which the claimant finds herself arises partly from the fact that the repairs to her property were effected at a time when the value of the Bulgarian currency was depressed, whereas the expenses of establishing the present claim were incurred at a time when the Bulgarian currency had acquired a higher value in dollars. The War Claims Rules do not, of course, permit compensation for variations in currency values.

As to the quantum of a suggested award for expenses incurred in preparing her claim, there are two difficulties: (a) it has not been established to the satisfaction of the Commission just what expenses were incurred, or whether such expenses were wholly necessary for the establishment and presentation of the present claim; (b) the War Claims Rules normally limit any allowance for expenses to a maximum 10% of the amount paid to any claimant out of the War Claims Fund. It would therefore be difficult, on the basis of the damages found by the learned Deputy Commissioner, to recognize an award for expenses in excess of \$70.00 which would be approximately 10% of the capital and interest award payable to the claimant.

There are however certain factors which may properly enter into the computation of the quantum of pecuniary loss caused by actual physical damage to the claimant's property, in addition to those factors which were fully considered by the learned Deputy Commissioner. I would estimate the compensable loss involved in those additional factors at \$500.00, which should be added to the award recommended by the Deputy Commissioner.

The 148,000 leva recommended in the Deputy Commissioner's report would, at the time the cost of repairs was incurred in 1945-1947, amount to \$541.33. By adding \$500.00 in respect of the additional factors, we arrive at a total compensable damage of \$1,041.33.

Though, for the reasons I have indicated, it is impossible to recommend an award for expenses abroad in the amount which the claimant states she has incurred, it is obvious that substantial expenses were incurred in the preparation of her claim. I would allow this item at \$135.00, which would be within the normal limit of 10% of the total amount payable to the claimant out of the War Claims Fund.

With the foregoing variations, I approve the report of the Deputy Commissioner.

I accordingly recommend that the claimant be paid the following amounts:

(a) \$1,041.33 as an award for damage to property in Bulgaria, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$135.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest and not to be taken into account for Priority purposes.

Dated this 26th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9890

Re: Lourie

Deputy Commissioner Hyndman has submitted to me his findings and his recommendation for the disallowance of these claims, with his reasons therefor.

Additional claims had been initiated by Mrs. Risa Lourie, wife of Arthur Lourie. Apparently, however, she realized that her separate claims did not come within the purview of the War Claims Rules, and she did not continue prosecution of them.

The claimants Paul Lourie and Arthur Lourie have been furnished with a copy of the Deputy Commissioner's report. On review, they have submitted materials in support of the contention that the Deputy Commissioner's recommendation should be reversed and awards of compensation recommended. In view of the importance of the claims, the written presentations were supplemented by an oral argument at Ottawa, on which Mr. Morawetz and Dr. Sigmund Samuel represented the claimants. Mr. Morawetz summarized the points of the claimants' arguments as follows:

1. The Nazi measures of 1938 did not amount to confiscation.
2. "Arianization" followed a different pattern in the present case, as the person who took over the property was a trustee for the owners, rather than an agent of the Nazi authorities.
3. The German confiscation measures of 1938 and 1939 were null and void.
4. We must give effect to subsequent Austrian remedial legislation.

For the reasons which will later appear, it is not necessary for me to deal in detail with arguments numbered 3 and 4. I should like, however, to note that in support of the contention that Canadian Courts and quasi-judicial bodies will not recognize the extra-territorial validity of enactments of a confiscatory nature which run counter to the ideas of justice and morality recognized by civilized people, Counsel has cited the case of *Laane and Baltser v. Estonian State Cargo & Passenger SS Line*—(1949)2D.L.R. 641. It may, however, be noted that the authority of the cited case goes only so far as to indicate that our courts regard enactments which are confiscatory without providing reasonably fair compensation as being penal in their nature and that our courts will not assist foreign powers to enforce enactments of a penal or taxation character by recognizing their extra-territorial validity. In the cited case, the issue concerned the effect of a confiscatory measure enacted by the Estonian Soviet Socialist Republic, which was alleged by the respondent to divest the appellants of their title to a steamship called the “*Elise*”. The “*Elise*” had, subject to the alleged confiscation, been arrested and sold at Saint John, N.B. and the issue arose from a controversy over the entitlement to the net proceeds of the sale. The ship had left the former Republic of Estonia in 1939 and had never been back at any time to Estonia, with the result that she had never been in that country after the passing of the confiscatory legislation, or even after the E.S.S.R. had come into existence (incidentally, the E.S.S.R. was recognized by the Government of Canada *de facto* but not *de jure* as the Government of Estonia). Not only had the “*Elise*” been outside Estonian territorial jurisdiction at all times after the passing of the confiscatory enactment, but she had continued up to the time of her arrest to be in the possession of her original owners, the appellants.

The Supreme Court of Canada held that the “*Elise*” was unaffected by the confiscation, and that therefore the net proceeds of the sale belonged to the appellants.

In the course of his judgment, Kellock J. quoted with approval the judgment of Lord Jamieson in the “*El Condado*” (1930) 63 L.L. Rep. 83: “While our courts will treat as binding legislation of a confiscatory character enacted by a foreign government recognized by His Majesty’s Government as a sovereign government so far as affecting property within the foreign government’s jurisdiction, such legislation will not be held to affect property situated in this country or without the territory administered by such government.”

It will therefore be seen that the recognition of a confiscatory measure enacted by a *de facto* government of the country of the *situs* is not contrary to the principles upheld by our courts in so far as such a measure affects the ownership of tangible property situate within the territorial jurisdiction of the enacting authority.

In the same context, the claimants’ Counsel cites certain expressions of opinion appearing in the case of: *Re Herbert Wagg & Co., Ltd. et al.* (1956) 1 A.E.R. 129. The actual decision of Upjohn J. in that case, however, is rather based on and lends support to the stated, and generally accepted, principle that English Courts will afford recognition to the legislation of a foreign state in so far as it affects the title to movables in that state at the time of the legislation, whether they belong to its own nationals or to others who bring their movables within its jurisdiction for business or private reasons. The judgment goes on to add that confiscation without adequate compensation is not *per se* a ground for refusing recognition to such foreign legislation.

It would seem natural that the principle of recognizing foreign legislation affecting the title to movables would apply *a fortiori* to legislation affecting the title to immovable property.

Counsel for the claimants urge, however, that the War Claims Fund is being administered pursuant to the recommendations of this Commission; that therefore recognition of German legislation in Austria does not go so far as to affect the claimants' right to share in this Fund in Canada. I do not believe that this is a valid argument, as the claimants' entitlement to share in the War Claims Fund is dependent upon their respective ownership of the property in Austria at the time of loss or damage caused by operations of war.

After weighing very carefully Counsel's submission that the confiscatory enactments in Austria were void *ab initio* and that the property continued to belong to the claimants until the damage by war operations, I feel bound to follow the formula of interpretation adopted by the Commission as the result of careful consideration at a series of meetings of the Deputy Commissioners, and subsequently applied in such cases as CASE NO. 1486—*Re: Whitehead*, CASE NO. 9770—*Re: West*, and CASE NO. 9798—*Re: Mahler et al.* That formula is to the effect that the ownership of a claimant must be determined as at the time of war loss or damage; that previous confiscatory measures enacted and carried out by a government recognized by Canada as the *de facto* government of the country of the *situs* must be recognized as divesting the ownership of a claimant; and that the Commission cannot give effect to post-war restoration measures as retroactively revesting the ownership at times including the date of war loss or damage.

I am free to admit that this formula of interpretation is not clear of difficulties, but I have most carefully considered and reconsidered it during the past 15 months, and I am still convinced that, on balance, the interpretation recommended by the Deputy Commissioners is the proper one.

Dr. Samuel submits that if the Canadian Government had been fully aware of the facts leading up to the Austrian Anschluss, the declaration of recognition would never have been made, but that such recognition is invalid in view of the misinformation on which it was based. This argument has perhaps some moral merit, but it would appear to be analogous to asking a court to disallow the validity of an act of Parliament on the ground of inaccuracy in the statements made by the members who promoted it.

Dr. Samuel also contends that by recognizing the error and declaring war on Germany ("not Austria") Canada invalidated its previous recognition of 17th March 1939. The fallacy of this argument lies in the fact that Canada's declaration of war on Germany obviously included a declaration of war on what had been Austria, which was then recognized to be a part of the German Reich.

Coming to arguments advanced under headings numbered 1 and 2, the fact that the person who initially took over the property was a friend, or even a nominee, of the claimants does not appear to me to differentiate the case from other Austrian "confiscation" cases. The claimants were, on their own submission, "forced" to sell their business to Anton Ziegler. Ziegler was a Nazi party member, and he subsequently sold the assets to Messrs. Ferdinand Polzl and Ernst Weigensamer, both of Vienna. The inference that the claimants had been divested of their ownership is borne out by the two further facts, namely (a) that the sale by Ziegler was transacted without their consent and that they did not receive any part of the proceeds; (b) that in order to obtain restoration of their property after the war it was necessary for the claimants to make an application before the Restoration Commission.

After a very careful review of all aspects of the cases, I find myself in agreement with the conclusion of the learned Deputy Commissioner that the claimants' property was confiscated in 1938 and that they were therefore not the legal owners at the time of damage by war operations.

I therefore approve the report of the Deputy Commissioner and recommend that these claims be disallowed.

Dated this 17th day of June, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Note: This recommendation applies to CASE NO. 9891 (Paul Lourie) as well as CASE NO. 9890 (Arthur Lourie).

CASE No. 9891

Re: Lourie

NOTE: See Case No. 9890.

CASE No. 9898

Re: Walsh

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

I note that these claimants first gave notice of their claim on 28th May 1956. Their notice is, however, related back to the General Notice given on 22nd September 1954 by the Government of Newfoundland for the protection of victims of the "Caribou" disaster.

The claimants have been furnished with a copy of the Deputy Commissioner's report, and have waived presentation of further materials on review.

There is, however, one point on which, in my opinion, the award should be revised upwards for the benefit of the claimants. The award recommended by the learned Deputy Commissioner is based on the prospective earnings of the late Francis Patrick Walsh of \$3,702.40 per year for a reduced period of life expectancy of 12 years. This annuity is capitalized by the learned Deputy Commissioner at the beginning of a 24-year period, 24 years being the estimated life expectancy of a man in good health and engaged in a non-hazardous occupation at the age of Mr. Walsh when he died. In my view, the learned Deputy Commissioner, having reduced the period of life expectancy to 12 years, should also have reduced the period of capitalization to the same number of years. Such an amendment in the computation would increase the total (death) award from \$12,000.00 to \$12,460. If the apportionment of the award were being made immediately after the death of the late Mr. Walsh, the amount allocated to the minor son would appear to be too small in proportion to that assigned to his mother. I presume, however, that the learned Deputy Commissioner made his apportionment on the basis of the assumption that the widow has provided to a large extent for the living and educational requirements of her son during the intervening period. On that basis, the apportionment would seem not unreasonable, but I would recommend that the whole of the additional amount of \$460.00 be added to the son's award.

As to the award for loss of property, it should strictly be paid to the personal representatives of the late Mr. Walsh. Owing, however, to the smallness of this award, the length of time elapsed, and the unlikelihood of any outstanding claims affecting the estate, I agree with the apparent conclusion of the learned Deputy Commissioner that the award may properly be paid directly to the beneficiaries of Mr. Walsh's intestacy, without the intervention of formal administration.

With the above-noted variation, I approve the report of the Deputy Commissioner, and I accordingly recommend that there be paid the following amounts:

(a) To Mrs. Marguerite Walsh, \$10,000.00 as her share of an award for the death of her husband, the late Francis Patrick Walsh, caused by the sinking of the S.S. "Caribou", such payment to be in order of Priority No. (1-2) and to bear simple interest from 14th October 1942 at 3% per annum;

(b) To James Alexander Winter, Registrar of the Supreme Court of Newfoundland, as Trustee for Patrick Jude Walsh, \$2,460.00 as his share of the same award, such payment to be in order of Priority No. (1-2) and to bear simple interest from 14th October 1942 at 3% per annum;

(c) To Mrs. Marguerite Walsh, \$100.00 as her share of an award for loss of property by her husband, the late Francis Patrick Walsh, at the sinking of the S.S. "Caribou", such payment to be in order of Priority No. 3 (a) and to bear simple interest from 14th October 1942 at 3% per annum;

(d) To Mrs. Regina Smith, \$100.00 as her share of the last-mentioned award, such payment to be in order of Priority No. 3(a) and to bear simple interest from 14th October 1942 at 3% per annum;

(e) To James Alexander Winter, Registrar of the Supreme Court of Newfoundland, as Trustee for Patrick Jude Walsh, \$100.00 as his share of the above-mentioned award, such payment to be in order of Priority No. 3(a) and to bear simple interest from 14th October 1942 at 3% per annum.

Dated this 15th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Since making my Report dated 15th October 1957 on the above noted claim for the death of the late Francis Patrick Walsh I have had the opportunity of further reviewing this claim in conjunction with a number of somewhat similar claims.

I have reached the conclusion that in the present case there is evidence that the death of the deceased caused a general dislocation of arrangements in the family to which the deceased belonged. As a consequence there appears to have been a resulting pecuniary loss in addition to that for which specific compensation has been awarded pursuant to my previous Report. It is, of course, difficult to compute the quantum of such pecuniary loss with any degree of arithmetical accuracy; but, putting myself in the position of a jury in an analogous civil case, I am inclined to estimate it in the additional amount of \$1,500.00.

I therefore recommend that there be paid the following amounts as an award for pecuniary loss resulting from the death of the late Francis Patrick Walsh in addition to the amount recommended by my Report of 15th October 1957, each payment to be in order of priority No. (1-2) and to bear simple interest from 14th October 1942 at 3% per annum:

(a) to Mrs. Marguerite Walsh, \$1,000.00;

(b) To James Alexander Winter, Registrar of the Supreme Court of Newfoundland, as Trustee for Patrick Jude Walsh, \$500.00.

Dated this 15th day of January, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CLAIM No. 9899

Re: Lukacs

...This is a case in which it is naturally extremely difficult to secure adequate information or evidence. I am, however, not disposed to disturb the findings made by the learned Deputy Commissioner, and I therefore approve his recommendation without variation, subject to assignment of the claimant's rights to receive payment of compensation from the Government of Hungary, or other alternative source; War Claims Regulation No. 7 relieves the Commission from regarding such an entitlement as satisfaction otherwise provided for...

Dated this 18th day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9903 (261T)

Re: Marle

...The claimant was born in Czechoslovakia in March, 1895, and lived in that country until August, 1939, when with his wife and family he came to Canada. He has lived in Canada since he was landed in this country on August 25, 1939, and was granted Canadian citizenship on February 13, 1947. He was, therefore, neither a Canadian nor a United Nations national when his goods were seized and removed from Trieste by the Germans on or about May 11, 1944. He bases his claim on the provisions of paragraph 9 (a) of Article 78 of the Treaty of Peace with Italy, under which persons who have been treated as enemy under the laws in force in Italy during the war are included in the definition of United Nations nationals. The circumstances in which his goods were sequestered by the Italian authorities in 1943 would, in accordance with the decision of the United States-Italian Conciliation Commission in the Feldman case (December 6, 1954), place him in that category of persons...

...As the claimant was not a Canadian at the time of the loss of the goods he is not eligible to claim under the War Claims Rules for their loss, and the claim made by him under the War Claims Rules should be disallowed.

July 27, 1955.

(Sgd) James Francis, Q.C.
Deputy War Claims Commissioner

Note: Recommendations confirmed by Chief War Claims Commissioner, 24 April 1957.

CASE No. 9905

Re: Brealey

...I may remark that loss of wages has been held to be compensable in a few somewhat similar cases, but in this case there is no evidence to indicate how or why the alleged loss of wages occurred, and I therefore agree with the learned Deputy Commissioner Francis that this item must be disallowed...

Dated this 31st day of May, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9917 (56 IT)

Re: Del Duca

...Strictly speaking, the award to be recommended as compensation for the loss would be in the nature of personal property belonging to the estate of the late claimant, and should be paid to his personal representative for distribution according to the laws of the Province of Ontario.

A search of the Surrogate Office records at Toronto indicates that no will of the late Francesco Del Duca has been probated, and no Letters of Administration granted. As the present claimant is next-of-kin both to his father and to his mother, he would apparently be the sole beneficial owner of entitlement to the award. In view of the relative smallness of the award, the length of time elapsed, and the unlikelihood of any claims affecting the estates of his father and mother, I am of the opinion that the recommended award may properly be paid to the present claimant without the intervention of formal administration....

Dated this 2nd day of June, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9918 (57 IT)

Re: Teoli

My amended recommendations in the case of *Dizazzo*—CASE No. 9978, and *D'Errico*—CASE No. 10021, were based on the principle that entitlement to compensation for war damage is a personal claim—*Re Grimston*, CASE No. 9517 and *Beer*, CASE No. 9780, and is not alienated by a mere sale of the damaged property subsequently to the war damage; though the contrary appears to be the situation under Italian domestic law. The former principle is clearly safeguarded in Section 9(b) of Article 78 of the Treaty of Peace with Italy, and is, I think, the proper one to apply also in cases under the War Claims Rules.

In the present case the damaged property was sold in December 1951, but I hold that the claimants did not divest themselves of their entitlement under the Rules; without prejudice, of course, to obligations between them and the purchaser under Italian domestic law.

The three claimants were Canadian citizens at the time of presenting their claims, and Were Canadian nationals at the time of the damage. Their sister Maria Antinozzi, though married to a Canadian, had not become a Canadian citizen up to 14th July 1953, and there is no evidence that she has since acquired Canadian citizenship. She is therefore presumably not eligible to claim. Another brother Giuseppe Teoli has not claimed and is presumably not a Canadian.

It is established that the claimants each owned a one-fifth undivided interest in plot (a) in "Cimitero" and a one-fourth undivided interest in plot (b) in "Vallevona", both in Italy, and that both plots were damaged by operations of war in 1943 and 1944.

I assess the compensable damage suffered by each claimant at \$68.29 based on the comparative cost of living indices as of 30th June 1939.

I accordingly recommend that there be paid, as awards for damage to property in Italy, the sum of \$68.29 to each of the claimants Domenico Teoli, Giacomo Teoli, and Domenica Carbone, together with simple interest thereon from 1st January 1946, but subject to deduction in each case of the amount to be paid by virtue of my recommendations of this date under the *War Claims (Italy) Settlement Regulations*.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: See also following recommendation—CASE No. 57 (IT) (9918).

CASE No. 57 (IT) (9918)

Re: *Teoli*

By my Report to the Honourable, the Minister of Finance, dated 26th March 1958, I approved the Recommendation of Deputy Commissioner Francis, disallowing this claim.

The claimants had sold the property concerned to one Domenico Antonio Teoli by deed dated 12th December 1951 "with all relevant rights". Italian law differs from the English law which would be applicable in the circumstances, and the disallowance was based on the principle expressed in the certificate of the Italian Minister of Finance that in view of the deed of sale "the claimants would be entitled to compensation only if they can prove that the deed contains a clause reserving to them any eventual compensation for war damages and that the buyer renounces his rights to said compensation".

On 11th December 1958 in CASE No. 69 (IT) (10021)—*D'Errico*, and on 1st October 1959 in CASE No. 66 (IT) (9978)—*Dizazzo*, I had occasion to consider more fully the principle governing the right to compensation in such circumstances. In each of those two cases I ultimately applied the rule laid down in the second sentence of Section 9(b) of Article 78 of the Treaty of Peace with Italy, which provides: "If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this article, without prejudice to obligations between the transferor and the purchaser under domestic law".

The interests of uniformity and fairness seem to require that the Teoli case be reopened and the same principle applied.

The claimant Domenica Carbone has been a Canadian at all relevant times since 1923 and her brothers Domenico Teoli and Giacomo Teoli since 1933. Their sister Maria Antinozzi, though married to a naturalized Canadian, was not included in his certificate of naturalization; she therefore apparently remained an Italian national, and is not eligible to claim. Another brother Giuseppe Teoli, co-owner of one of the two lots concerned, has not attempted to claim, and is therefore presumed to be ineligible.

It has been established that from 1931 to 12th December 1951 each of the three eligible claimants owned a one-fifth undivided interest in plot (a) in "Cimitero" and a one-fourth undivided interest in plot (b) in "Vallevona", and that both plots were substantially damaged by operations of war during World War II, specifically between July 1943 and June 1944. None of them received any compensation for the damage.

That damage is estimated by the claimants' geometrician at 422,000 lire in respect of plot (a) and 834,000 in respect of plot (b). The Italian Treasury Office assesses the cost of reconstruction at 64,740 lire and 115,240 lire respectively, and refers to the geometrician's estimate as greatly exaggerated.

For the reasons mentioned in CASE No. 56 (IT.) (9917)—*Del Duca*, and CASE No. 69 (IT.) (10021)—*D'Errico, supra*, the Commission has almost invariably accepted the official assessment of the Italian Department of Finance as being more realistic towards determining the quantum of compensable damage than is the estimate of the geometrician employed by the claimants.

In the instant case, however, the damage seems to have occurred over at least two years, and it is difficult to assess the actual loss, with any degree of mathematical accuracy. I am inclined to the view that the official Italian estimate was somewhat conservative. In the capacity of a jury, I would find that the total relevant damage was 120,000 lire in respect of plot (a) and 180,000 lire in respect of plot (b). The relevant damage suffered by each claimant would accordingly be one-fifth, or 24,000 lire, in respect of plot (a) and one-quarter, or 45,000 lire, in respect of plot (b), or a total of 69,000 lire by each of the three. Each would therefore be entitled to payment of two-thirds of the last mentioned amount under the Treaty.

The fees and costs necessarily incurred by the claimants in establishing their claims were inevitably large in proportion to the amount of the awards. I would fix the fees at 60,000 lire.

I accordingly recommend that, pursuant to the *War Claims (Italy) Settlement Regulations*, the following amounts be paid to each of the claimants Domenico Teoli, Giacomo Teoli, and Domenica Carbone:

(a) Two-thirds of the property loss of 69,000 lire valued as of 27th October 1952	lire 46,000
(b) One-third of costs incurred by claimants valued as of the same date	lire 20,000
	<hr/>
To each	lire 66,000

The recommendation is, of course, made without prejudice to obligations between the transferor and the purchaser under domestic law....

Dated this 21st day of November A.D. 1966.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

NOTE: see also preceding CASE No. 9918 (57 IT).

CASE No. 9919 (19 IT)

Re: *Corbo*

....As this claim was presented by the late Carlo Corbo in his lifetime, the technical date of presentation being 23rd October 1952, it is not necessary to record findings as to the national status of the beneficiaries of his intestacy. I am advised that, according to the rules of Italian law, the benefits of the award may properly be paid to the beneficiaries without the intervention of formal administration....

Dated this 13th day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 58 (IT) (9921)

Re: Iacovone

Deputy Commissioner Francis, to whom this claim was referred, has reported to me his findings and recommendation, with his reasons therefor.

I agree with the opinion of the learned Deputy Commissioner that the eligibility of the present claimant to receive an award under the Treaty of Peace with Italy is of a purely technical nature. The claimant, after having been naturalized in Canada on 3rd November 1927, returned to Italy in 1928, and has not been in Canada since then. I think it is obvious that he forfeited his domicile of choice in Canada and regained his domicile of origin in Italy.

Under the Treaty of Peace with Italy, however, and under the *War Claims (Italy) Settlement Regulations*, the question of domicile is not material. The claimant's naturalization in Canada was never cancelled, and he apparently never regained his former status as an Italian national.

At the date of the armistice with Italy, 3rd September 1943, the status of the claimant was apparently that of a British subject domiciled in Italy. He would therefore be a United Nations national, and would comply with paragraph 9 of Article 78 of the Treaty of Peace.

The Department of Citizenship and Immigration has ruled that the claimant became a Canadian citizen on 1st January 1947 and continued to be a Canadian citizen until 1st January 1957, when automatic loss of citizenship became effective. I think the Commission is bound to accept this ruling, and therefore to find that the claimant was a Canadian citizen on 15th December 1947, the date of coming into force of the Treaty of Peace with Italy, as required by paragraph 2 (1)(a) of the *War Claims (Italy) Settlement Regulations*.

From the foregoing reasoning, it would seem clear that the claimant has technically met the qualifications laid down for eligibility to receive an award under the Treaty of Peace with Italy.

Upon reviewing the report of the Deputy Commissioner, I am of the opinion that this claimant's eligibility, and his entitlement to the awards recommended under the *War Claims (Italy) Settlement Regulations* have been duly established.

I therefore approve the report of the Deputy Commissioner without variation, and I accordingly recommend that the claimant be now paid, pursuant to the *War Claims (Italy) Settlement Regulations*, the following amounts:

- | | |
|---|--------------------|
| (a) Two-thirds of the property loss of 613,924 lire valued
as of 27th October 1952 | lire 409,283 |
| (b) One hundred percent of award in respect of fees and
costs incurred by claimant in establishing claim, also
valued as of 27 October 1952 | lire 30,000 |
| | <hr/> lire 439,283 |

Dated this 2nd day of December, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

CASE No. 9925

Re: Zimmer

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review his Counsel, Mr. Morawetz, has presented an elaborate argument in support of the contention that the Deputy Commissioner's recommendation should be reversed, and an award recommended. Mr. Morawetz's written submissions have been supplemented by an extended oral presentation before me at Ottawa.

The learned Deputy Commissioner dealt with this case in conjunction with the case of the claimant's brother *Re: George Zimmer*—CASE No. 9638. From reading together the reports on the two cases, it is apparent that the Deputy Commissioner made the following findings in favour of the claimant:

That the claimant has been a Canadian national within the meaning of the War Claims Rules since the date of his naturalization in Canada on 18th August 1944;

That up till 1938 the claimant was the owner of the property involved, located in the City of Königsberg, East Prussia, at Vorstaedtische Langgasse 54 and Vorstaedtische Feuergasse 32. The property appears to have been a single brick building, housing 13 apartments, four-room office, and furniture store. There was a front building with ground floor and three upper floors, combined with a rear building and side wing. It appears to have been located on the corner of the two streets mentioned, and the apartment section seems to have had its entrance on one street and the business premises on the other street;

That the property was damaged as alleged (i.e. complete destruction of the building) on or after 29th August 1944 at a time when the claimant was a Canadian national.

I agree with the opinion of the learned Deputy Commissioner that the foregoing findings are reasonably well supported by the documentary and other evidence submitted.

The Deputy Commissioner, however, was not satisfied that the claimant was the owner of the property at the date of the loss. He infers that the case is on all fours with that of *George Zimmer*, in which he held that as to ownership after the outbreak of the war there is no definite evidence one way or the other. He further holds that neither of these claimants has discharged the onus which the War Claims Rules place upon them of establishing continued ownership by displacing the presumption or inference of confiscation.

It is true that in Germany enactments were passed in 1938 and 1939 which had the general purpose of depriving persons of the Jewish race of their property rights. The resulting confiscations, however, were carried out in a variety of methods and often by a series of steps. Mr. Morawetz argues that the confiscation of the claimant's property was never consummated. He suggests as a possible reason the facts that the claimant was Austrian born and that his wife was an Arian, so that the Gestapo may not have known that the claimant himself was of Jewish origin.

In support of this contention, Mr. Morawetz stresses the "statutory declaration" of Emil Sokolowski, sworn at Halle on the Saale on 17th January 1958. Mr. Sokolowski deposes that he was entrusted with the administration of the relevant property of Mr. Hermann Zimmerspitz, (then the name of the present claimant) and was acting under power of attorney from the claimant from January 1940 until August 1944, when the building was totally destroyed. He

further deposes that the premises involved were not confiscated by either the government or the National Socialist Party, but that Mr. Zimmerspitz continued to be the rightful owner and was listed as such in the Land Register for Koenigsberg. He deposes that on behalf of the claimant he had necessary repairs carried out and paid public duties and taxes, insurance premiums, etcetera.

Unfortunately, the evidence discloses that the files of the Koenigsberg City administration and tax office, and of the Fire Society for the Province of East Prussia were lost as a result of operations of war, and that the land files and registers of the Land Registry and Cadaster Offices cannot be found. It is extremely difficult to obtain documentary or other convincing evidence from behind the Iron Curtain. We have, however, a document certified by the Town of Duisburg, from which it appears that Hermann Hirsch Israel Zimmerspitz of 97 Charles Street East, Toronto, Ontario, is listed in the City Directory of Koenigsberg as owner of the property concerned in 1941, under the administration of Emil Sokolowski. My understanding is that the City of Duisburg stands in an adoptive relationship to the former German municipality of Koenigsberg, the latter now being in Russian hands.

I am of the opinion that the evidence now presented, though not entirely satisfactory, is sufficient to support Mr. Morawetz's contention that the confiscation of the claimant's property in Koenigsberg was never consummated, but that he continued to be the owner, and to be recognized as such until the date of the total destruction of the building in August 1944. I therefore find that the claimant suffered a compensable loss in the destruction of his building.

The available evidence as to taxation assessments, insurance, income from rentals, etcetera, would appear to indicate that the alleged loss of \$43,993.57 is probably not exaggerated. The evidence, however, on the question of valuation is far from being complete, and the Commission must make allowance, not only for the inevitable uncertainties in the proof of valuation, but for depreciation which would naturally occur during the years when the claimant was absent from Germany and unable to supervise his property. After taking into consideration the probable value of the remaining lot on a corner in the main business section of Koenigsberg, I am inclined to the view that \$30,000.00 would fairly represent the compensable value of the loss accruing to the claimant by the destruction of his building.

As to expenses, I am of the opinion that \$400.00 would fairly represent the amount of expenses necessarily incurred abroad by the claimant in the preparation of his claim.

Having reviewed the report of the Deputy Commissioner, I accept the above stated findings which he has made in favour of the claimant, but I reverse his opinion that the claimant has not established continued ownership up to the date of destruction.

I accordingly recommend that the claimant be paid:

(a) \$30,000.00 as an award for loss of property in Koenigsberg, East Prussia, such payment to be in orders of Priority Nos. 3(a) to 5 inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$400.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim, such payment to be without interest, and not to be taken into account for priority purposes.

Dated this 19th day of June, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 67 (IT) 9927

Re: Landauer

This claim was heard by me in Toronto. Mr. D. F. McDonald of the firm of Day, Wilson, Kelly, Martin and Morden, barristers, 85 Richmond St. W., Toronto 1, represented the claimant, and Mr. R. J. Batt the Commission.

The claim is brought under the provisions of the Treaty of Peace with Italy and *War Claims (Italy) Settlement Regulations* by the estate of George Landauer, interpreter, late of Rexdale Post Office, Etobicoke, Ontario, for loss of property looted by the Germans, from Trieste, Italy, in April 1944, the alleged value being \$6,702.

The late Mr. Landauer was born at Heilbronn, Germany, on the 24 October, 1905, landed in Canada on 11 March, 1941, and was subsequently granted naturalization on the 17th of June, 1946, certificate no. 208362, series A. It is to be noticed that the late Mr. Landauer did not have Canadian status at the time of loss and is therefore ineligible to claim under the War Claims Rules.

Although the late Mr. Landauer originally filed a claim for loss of property in Belgium, that portion of the claim was withdrawn, and the only matter before this Commission is for loss in Trieste, allegedly coming within the provisions of the Treaty of Peace with Italy.

The late Mr. Landauer was of Jewish faith and was consequently one of the United Nations Nationals. Whilst there does not appear to be any direct evidence that he was treated as an enemy of Italy, nevertheless it would appear from several former decisions of this Commission, that on account of his Jewish faith he should be regarded as coming within the provisions of Section 9(a) Art. 78 of the Italian Peace Treaty.

The case is similar in all material respects to that of *Henry Ignaz (Hyndkigunaein) Wolf* (CASE No. 24 Italy) decided by Deputy Commissioner Francis on the 31st of May, 1955, which was approved and an award granted, and from which I quote the following:

"As I have already noted, the cases of Feldman and the present claimant are almost identical. Both were domiciled in Czechoslovakia prior to the war, they emigrated from Czechoslovakia at almost the same time, they both had goods in liftvans at Trieste for trans-shipment, they were both of the Jewish race and consequently the goods of both came under the sequestration order made by decree of the Prefect of Trieste on May 11, 1943, and were subsequently confiscated and removed by the German authorities following their occupation of Trieste. Both were treated as enemy under the laws in force in Italy during the war with the result that they lost their goods. Both are therefore entitled to receive compensation for the loss of their goods under Article 78, paragraphs 1 and 4(a) of the Treaty of Peace with Italy."

It will be noted that Mr. Francis referred to the sequestration order made by decree of the Prefect of Trieste on May 11, 1943. Whilst I do not have this Treaty before me I assume that it did exist, and the statement has presumably been adopted in cases similar to this.

I am of the opinion, therefore, that the applicant is eligible to claim under the provisions of the said Treaty of Italy, but not under the provisions of the War Claims Rules, not being a Canadian national at the time of the loss. It therefore remains to estimate the extent of the loss claimed for.

The present applicant Mrs. Webb was the former wife of said Landauer who died intestate on the 9th June, 1953, and she has since remarried. There are no children of the first marriage.

The evidence discloses that in 1936, before leaving Germany, he shipped goods by a liftvan, first to Antwerp, but owing to shipping difficulties there had them transferred to Trieste, with instructions, according to the affidavit of deceased dated June 8, 1947, for storage and safe keeping until he arrived in Canada, at which time owing to the outbreak of war it was impossible to forward as instructed. In 1944 the Germans seized the van and sent it to some undisclosed part of Germany, and the goods have not since been heard of, and became lost.

In 1943 the property was undoubtedly sequestered by the Italian authorities by virtue of the said decree of the Prefect of Trieste owing to Landauer's Jewish faith (see the quotation from the decision of Deputy Commissioner Francis above quoted).

I am satisfied therefore that the estate is entitled to such compensation under the Italian Treaty as may be determined.

In addition to the contents of the liftvan deceased also transferred to Belgium various assets for which he claimed \$12,500 compensation which was refused by the Belgian authorities on the ground that he was not a Canadian at the time of the loss.

The present claim is for \$7,000 in respect of the goods in the liftvan.

That the liftvan was shipped to and stored by the storage firm of Villain and Fassio of Trieste is fully established by the documents on file, and also that it was seized by the Germans and shipped out of Italy.

The only detailed evidence of the value of the goods is that attached to the affidavit of deceased and of his sister Elizabeth Saeur. Her estimate of value is \$10,800. However, it will be noted that a large number of the articles are of the luxury class such as oriental rugs, fine silver, special china, pictures, etc. etc.

Whilst there is no corroboration as to the existence or value of these special assets, according to the record the parents of the deceased from whom he inherited the property were of considerable wealth, and accustomed to a high standard of living, and in all probability did possess furnishings of the character described. In her evidence which impressed me favourably she stated that the goods were insured against fire for 50,000 lire or \$2,500. Whilst the amount of insurance is not an absolute test of the real value, it is of much assistance in arriving at a fair conclusion. As freight on such a shipment would be very considerable it seems to me that it would be unreasonable to expect one to go to such expense for goods of trifling or small value.

Taking into consideration all the circumstances of the case and not overlooking the rule of reasonable market value, I am of opinion that \$3,500 should be deemed fair and reasonable value of the property involved.

I might add that the widow of deceased admitted she had no knowledge of the matter not having met the deceased until 1953.

I am satisfied that no compensation from any other source was received by the deceased or his estate.

I would therefore recommend an award of two-thirds of \$3,500 or \$2,333.33 which converted into lire amounts to 1,506,348 lire as of October 27, 1952.

I would allow the sum of 50,000 lire for costs incurred in proving claim in Italy.

January 22, 1958.

(Sgd) J. D. HYNDMAN
Deputy War Claims Commissioner

NOTE:—Both branches of the foregoing Report (award under Italian Treaty and disallowance under War Claims Rules) were approved without variation by the Chief Commissioner, 20th February 1958.

CASE No. 9935

Re: Paraskevas

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The present claimant has been furnished with a copy of the Deputy Commissioner's report, and, on review, has submitted further materials in support of the contention that the Deputy Commissioner's recommendation should be reversed, and an award recommended.

The claimant proceeds to explain some of the discrepancies which arose in the presentation of his claim.

I agree with the finding of the learned Deputy Commissioner that the widow of the deceased Thrassos Paraskevas was not a Canadian national at the time of the alleged loss. Though the Canadian naturalization of Thrassos Paraskevas had not been revoked on his return to reside in Greece, he obviously abandoned his domicile in Canada. His wife, therefore, would not have a common law domicile in this country and, as she had never been landed in Canada for permanent residence, she would not be a Canadian under any of the provisions of the War Claims Rules. She never became a Canadian Citizen.

The Rules therefore preclude the Commission from making any award for the benefit of the widow. Her share of any award, which I am advised would be one-quarter by reason of the intestacy of her husband the original claimant, would therefore lapse. The remaining three-quarters would belong to the present claimant, and in the circumstances I consider that his share (if any, might properly be paid directly to him without the intervention of formal administration.

Despite the inadequacy and many inconsistencies in the evidence, to which the learned Deputy Commissioner properly gave weight, I am of the opinion that sufficient proof has been furnished to establish the fact of some compensable loss, though falling far short of the amount claimed. In view of the incompleteness and conflicting nature of the evidence, I would fix the loss and damage at \$400.00 for the moveable property and \$800.00 for the immoveable. The present claimant's total ($\frac{3}{4}$) share would be \$900.00.

I would also allow him \$50.00 for expenses incurred abroad in the preparation of his claim.

I therefore reverse the recommendation of the Deputy Commissioner and I accordingly recommend that the present claimant, Paraskevas Paraskevas, be paid the following amounts, each in Order of Priority No. 3(a):

(a) \$900.00 as his share of an award for loss of property at Salonika by his father the late Thrassos Paraskevas, with simple interest from 1st January 1946 at 3% per annum;

(b) \$50.00 (without interest) for reasonable expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim. It is noted that the Estate of Thrassos Paraskevas is indebted to the Department of Citizenship and Immigration in the sum of \$23.98.

Dated this 17th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9938

Re: Henning

Mrs. Henning claims the award of compensation for maltreatment for which her former husband, H-6371 Douglas Haig Moore, Winnipeg Grenadiers, would have been eligible had he lived.

The record shows that the deceased had served with the Canadian Army in the Far East and was captured at Hong Kong by the Japanese on December 25, 1941. He was admitted to the Bowen Road Hospital on August 7, 1942, suffering from diphtheria and dysentery, and died there on September 18, 1942. He had then been a prisoner of the Japanese for a period of 268 days. He and the claimant were married at Winnipeg on October 20, 1941. There was no issue of the marriage and at his death the claimant was his only dependent. As such she was in receipt of widow's pension until July 6, 1946, when she was married to Ivan Henning.

Under the War Claims Rules, the maltreatment award for which the deceased would have been eligible survives for the benefit of the widow. However, as in this case the widow has remarried it is one in which the formula that has been adopted in respect of remarried widows should be applied. Under this formula the widow is deemed to have had at the date of her husband's death a life expectancy of twenty years, and from the point of view of actual dependency would be entitled to five per cent of the amount of the award for each year or fraction of a year elapsed from the date of her former husband's death until her remarriage. Under this formula, Mrs. Henning is eligible to receive twenty per cent of the amount of the award for which the deceased would have been eligible.

Mr. Moore would have been eligible for a maltreatment award of \$268 had he lived. I recommend, therefore, that she be granted an award of compensation in the sum of \$53.00, being twenty per cent of the amount of the award for which the deceased would have been eligible.

October 18, 1957.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has argued that the award recommended by the Deputy Commissioner should be increased by allowing to her the full compensation to which her husband, the late Douglas Haig Moore, would have been entitled if he had lived.

On behalf of the claimant, Mr. Morrison properly points out that if the claimant had contracted a common law relationship instead of re-marrying, she would be eligible for the full compensation. The War Claims Rules, however, give the Commission no jurisdiction to consider the relative moral merits of the two situations.

According to the War Claims Rules, in order to be eligible for the survivorship of a maltreatment award, the claimant must be both the widow of the deceased, and his dependent. Since her remarriage, she has been neither the widow, nor the dependent, of her former husband. I am of the opinion that the Commission would be fully justified in entirely rejecting such claims when made by widows who remarried before the date of the appointment of the Commission. For reasons of equity, however, as outlined in CASE NO. 1993—*Re: Mrs. Aleta M. Cleveland*—the Commission has adopted a formula which gives

to a re-married widow a proportion of the award based on the period of time elapsed between her former husband's death or liberation and her own re-marriage. The formula so adopted seems to give full recognition to any equitable claim of survivorship, and for purposes of uniformity, the Commission has no alternative but to apply it in the present case.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$53.00 as her share of an award for maltreatment of her former husband, the later Private Douglas Haig Moore, whilst a prisoner of war in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 30th day of January, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 59 (IT) (9939)

Re: Bata

This claim was heard by me in Ottawa on the 27th February, 1958. Mr. W. W. Parry, Q.C., appeared as counsel for the applicant and Mr. R. J. Batt represented the Commission.

The claimant was born in Czechoslovakia on 17 September 1914, naturalized in Canada on the 26th February 1942, certificate No. 188229, and therefore eligible to claim under the Italian Peace Treaty and the Rules of the Commission.

The claim is in respect of damage by war action in Italy to certain buildings, plant and machinery, and looting of certain personal property.

The legal owner of the property in question is an Italian Corporation called Fabbrica Calzature Veca Ferrera S. A. 1 (for convenience called Veca S A 1), claimant being allegedly the indirect beneficial owner of 75% of the share capital of said Corporation.

The amount claimed under the Treaty is two-thirds of 75% of the replacement value of damaged, destroyed or looted assets as at October 1952.

It is alleged that the replacement value of said assets at the date of loss during the war amounted to 8,686,744.60 lire, two-thirds thereof being 5,791,163.06 lire and the share of claimant being 75% thereof, the remaining 25% being the interest therein of claimant's mother, a non-Canadian.

Article 32 (page 70 of the Advisory Commission Report) "Claims by shareholders in Corporations" in part reads as follows:

"It is recommended that Canadians who held at the time of loss, directly or indirectly, ownership interests in corporations or associations which were not Canadians and whose property was lost or damaged by war operations, should be eligible to claim compensation for damage to such ownership interests."

"Property of Canadians as defined above would include ownership interests, held by Canadians, directly or indirectly, in corporations or associations which are not Canadians. Notwithstanding the rule that no compensation should be payable unless it is for damage resulting directly from war operations, compensation should be paid to Canadians, whether individual or corporate, for the damage to their shares in the capital stock of companies which are not Canadians where that damage to the shares resulted from damage to the property of those companies directly caused by war operations."

Claimant Thomas Bata, Jr. is the son and only child of the late Thomas Bata, Sr., who was a leading industrialist and founder of the Bata Shoe concern, in Czechoslovakia, probably the largest of the kind in the world, and carrying on business through individual corporations in many countries, including Italy.

Thomas Bata, Sr. was killed in an airplane accident in 1932 without leaving a valid will, and leaving him surviving the said claimant, Thomas Bata, Jr., and his widow Maria Bata, who inherited his whole estate in the proportions of 75% to the son, and 25% to his widow, according to a decree of the District Court in Zlin, Czechoslovakia, dated 28 June 1932, No. D 297/32.

The half-brother of Thomas Bata, Sr., John Bata, some years afterwards laid claim to the whole estate of his late brother on the ground of an alleged sale to him by Thomas Bata, Sr., which the said heirs contested, resulting in prolonged litigation in the Swiss Courts, and in the United States Courts of New York and Delaware States. It was decided in all these courts that the half-brother, John Bata, was not the owner of the assets of his late brother, but that the present claimant and his mother, the widow of Thomas Bata, Sr. were the sole beneficiaries of the deceased's estate, and his successors in title.

In order to carry on the huge business which he established in Zlin, Czechoslovakia, the deceased Bata formed many companies in various parts of the World, in which he directly or indirectly owned and controlled thereof all the stock or shares.

The Corporation in question herein was nominally owned by several other Companies and individuals as shareholders...

I am satisfied on the material presented that the late Thomas Bata, and after his death his estate, were the beneficial owners of all the said Companies' shares, such Companies being owned directly or indirectly by him, and that the said Mario Rocco was admittedly trustee for him, and had no beneficial interest in the Company.

It seems to me therefore, that the claimant having indirectly, ownership interest in the Italian Company in question, is eligible to claim compensation for damage to such ownership interest as provided for in Article 32 at page 70 of the Advisory Commission Report, and under the Treaty with Italy.

It remains therefore to ascertain the amount of the damage or loss sustained by the said claimant Thomas Bata, Jr.

There are in all about 20 items of claim with which I will deal separately:...

I therefore recommend an award in favour of the claimant John Thomas Bata, under the Italian Treaty the sum of L. 30,675,181 being $\frac{2}{3}$ of $\frac{3}{4}$ of the amount of the loss, namely L. 61,350,362 calculated as of October 1952.

No compensation has been received by claimant from any other source.

As preparation of the claim required a very great amount of work and services in Italy as evidenced by the various Exhibits, I am of opinion that a substantial award for cost be allowed, and which I would place at L. 500,000 or \$750.00 whichever is the greater. I think I should add that this is one of the most satisfactorily prepared and presented claims out of many I have heard.

Consideration will in due course be given, in accordance with the War Claims Rules for the balance of the total amount of compensation for which the claimant may be eligible under the Rules and for which no provision is made in this report.

May 30th, 1958.

(Sgd) J. D. Hyndman
Deputy Commissioner

NOTE:—Award approved by Advisory Commissioner 3rd June 1958, and supplemented by award under the War Claims Rules, 21st October 1958.

CASE No. 9939

Re: *Bata*

This claim was heard by me in Ottawa on several occasions—Mr. W. W. Parry, Q.C. appeared for the claimant, and Mr. R. J. Batt for the Commission.

The claim is for the sum of 457,826,030 Kroner, or \$15,750,046, for damage to buildings, stock in trade, and machinery, the property of Bata A.S., a corporation under the laws of Czechoslovakia, and situated in the City of Zlin, three-quarters of all the shares at the essential time being owned by the above claimant, the remaining one-quarter belonging to the estate of Mrs. Marie Bata, mother of said claimant, a non-Canadian and therefore ineligible to apply under the Rules of the Commission.

The eligibility of Thomas Bata to claim compensation under the Rules of the Commission, and the ownership of the shares in the said company Bata A.S., were established in the case of said Thomas Bata—No. 59 (IT) 9939—and it is therefore unnecessary to repeat what was there said in that respect. The decision in said last mentioned claim should be read as part of this recommendation.

The only question which gave me serious concern was as to whether or not there was voluntary collaboration, cooperation, or assistance, given by the company with and to the German enemy within the meaning of the Rules of the Commission as set out in page 26, which reads as follows:

“...where there was any voluntary collaboration or cooperation with or assistance to an enemy, in any part of its war effort, on the part of a claimant, whatever his nationality or nationalities, and whether individual or corporate, that claimant should be denied all participation in and should receive nothing out of the War Claims Fund.”

There is no doubt that goods such as boots, tires, and machinery were sold or supplied by the company Bata A.S. to the German authorities during the war. But it is asserted that such sales were made on orders of the occupying power and under International law could not be refused, and that any such refusal would result in confiscation, or personal punishment of such a nature as the enemy decided.

At this stage I might say that the Bata A.S. was one of the largest, if not the largest, industries in Czechoslovakia, and probably the largest of its kind in the world. It employed at times from 40,000 to 50,000 workers. There were about 70 buildings of various dimensions and a large quantity of finished and unfinished goods, as well as machinery of one kind and another used in the manufacture of shoes, rubber tires and other products.

Dealing first with the question of collaboration, after much oral testimony, and reading many affidavits of a credible nature, I have arrived at the conclusion that there was no *voluntary* collaboration on the part of the company or its management. So far as the claimant, Thomas Bata (Jr.) is concerned, for some years prior to the war he was resident in England, and following that was in Canada (where he was naturalized in 1942) and during those years was not at any time, including the war years, in Czechoslovakia, so that no collaboration can properly be attributed to him personally. Although, had the company itself collaborated, such would be attributable to him and deprive him of any award from this Commission.

The founder and sole owner of the company Bata A.S. died as the result of an airplane accident in the year 1932. His chief Executive Officer from about the year 1919 was Dominick Cepera, who became Managing Director of the company, and held that position at the time of the advent of Hitler on March 15, 1939 and throughout the period of the war.

Mr. Cepera was also prominent in public life and was Minister of Works in the former Czech Government. This Government, or what remained of it, continued to function under the so-called Protectorate of Hitler until 1941 or 1942, when it ceased to function. He was also Mayor of Zlin before and after the German occupation, and was, I conceive, apparently popular with the Czech residents of the city.

On certain anniversaries organized by the German authorities during the war, he made speeches favourable to the enemy, which, on the surface, would indicate collaboration. But, in explanation, his sworn testimony at two hearings, which I believe, is that he did so under orders of the German officials, and such speeches were prepared by his German masters, and similar speeches were placed in the hands of Mayors in several other cities to be read and delivered in the same manner. He testified that his whole policy was to submit to these humiliating acts in order to save not only the business of Bata A.S., but to keep it operating as before, and thus protect its many workers from being either conscripted into the German army, or sent to concentration camps. That he also assisted with his own money, as well as that of the company, many families whose heads were either executed or confined in concentration camps.

He testified also that by devious and secret methods, he kept the Benes Government in Exile in London advised of what was happening in the country, as well as obstructing the enemy in various ways.

When the Russians entered the country and the Germans fled, a strong Communist element took control, and, within a very short time Mr. Cepera was arrested and charged with treason and collaboration, but not long afterwards was allowed his freedom. He was subsequently tried and acquitted as will be referred to later in this recommendation.

He gives as a reason for his arrest the desire of the Communist element to confiscate Bata, as well as many other industries in the State. Mr. Cepera more or less stood in the way of their policy in that respect, so far as Bata was concerned. He states that whilst a democratic government was superficially supposed to exist, it was in fact under Socialist or Communist control.

In October 1945, after the war, a decree was enacted confiscating the industry. In that decree, copy of which is on file, there is no mention of collaboration on the part of the company.

After a legislature was established, in January 1946, a Statute was passed confiscating all industries which employed 400 or more workers and providing for compensation. The evidence is to the effect that no compensation was ever paid to any of such industries under that act, and, of course, following a full-fledged Communist Regime, no compensation has ever been paid.

What aroused my interest in the question of collaboration was a statement (Ex. 2) in an action between Marie T. Bata and Bata A.S. in the Supreme Court of New York. At page 9, it was stated by the solicitor for Bata A.S. (then owned and controlled by the Communist Government) that:—

“It appears that National Administrators were appointed for defendant Bata A.S. on January 8, 1946 (pursuant to Decree No. 5) on the grounds, *inter alia*, that the enterprise had been taken over by the German fascists and that its management collaborated with the common enemy. This is admitted in Mr. Rado’s (solicitor for Marie Bata) supporting affidavit (at page 4).”

A copy of said Rado affidavit is produced, and it is clear that what he said was merely a copy of the charge against Mr. Cepera, and such an inference cannot be drawn from it. Mr. Rado’s further affidavit was also produced and filed at the hearing, and in it he expressly denies any such admission having been made.

Copies of all the said legislation, decrees, and orders have been produced and filed affecting this, and other, industries, and in none of them is there any mention of collaboration as the reason for expropriation as affecting the Bata property.

It is also established that beyond putting German officials on the directorate and in a supervisory capacity, there was no confiscation by the Germans of this enterprise during the war.

Lengthy testimony was given by Mr. Cepera explaining his position in the company during the German occupation. He admits that the Company supplied a certain quantity of goods to the enemy, namely, boots, rubber tires, and machinery, to the extent of about 16 to 20% of production. That such goods were requisitioned by Army officers, and there was no alternative to filling such orders.

His first consideration, he testified, was to prevent, if possible, the enemy taking control of the business and probably throwing out of work thousands of Czech citizens, as well as condemning them to absorption in the German army, or taken to concentration camps, or worse fate.

I followed his testimony with the greatest care possible, and noted his demeanour, and I am forced to the conclusion that it was sincere and honest. I realize the very difficult position he found himself in, and the circumspection required of him to carry out his policy of deception and resistance to the enemy.

Mr. Cepera, in addition to his important office as Managing Director, was apparently, or, at least a fairly, wealthy man, and it is I think reasonable to say that his interests were Czech rather than Facist or Communist, neither of which systems would, I feel sure, be of advantage to him.

In connection with his trial before the Special Court constituted for the purpose of trial of traitors and collaborators, a full copy of the proceedings are on file, consisting of 190 pages and containing the evidence of many witnesses. The Court consisted of a Chief Justice and several colleagues. The trial lasted about three weeks and, on the 2nd May 1947, the following decision was rendered:

"On the basis of all the established facts, the National Court came to the conclusion that both of the defendants (Dominick Cepera and Jan Kapras tried together) behaved after May 21st 1938 as loyal and brave citizens of the Czechoslovakian Republic because they helped with the restitution and victory of the Czechoslovakian Republic, as far as possible for them under the conditions at that time, and from the beginning of the occupation until the liberation of the country they risked their lives, which they put in jeopardy from the enemy government because of their activities. The National Court did not find, therefore, any reasons to submit the facts on which the indictment was based, pursuant to Section 262 of the Criminal Code, as a misdemeanor pursuant to Sections 4 and 5 of the Decree concerning the National Court.

In Prague 7 May 1947."

Whilst this judgment is not binding in this country, nevertheless, on the evidence before me, I agree with their conclusion.

One of the witnesses heard by me was Mr. Jaromir Valenta, a doctor of laws in Prague and who was Counsel for the defendants in said prosecution. He confirmed what Mr. Cepera said regarding the influence of the Communist element immediately after the war, and their eagerness to take over all the important industries of the country.

He also testified that the Minister of Justice was opposed to the prosecution of Mr. Cepera and endeavoured to persuade the government to drop the same, but that for political reasons the Cabinet felt it desirable to proceed with it. The result of the trial as above mentioned was that Mr. Cepera was fully cleared and pronounced a loyal citizen.

Mr. Valenta impressed me as being a man of high character and I have no hesitation in accepting his testimony as reliable.

As I see it, the only possible charge which could be preferred against the company is the fact that they did supply the enemy with boots, rubber tires and certain machinery, and it was on orders or requisition from enemy officers that such goods were delivered. The Germans being occupants of the State, it seems clear that under the circumstances the company was helpless and unable to refuse any such requisition.

I have examined several decisions and works on International Law having a bearing on the point of collaboration as affecting the facts in this claim.

The following excerpts seem to me to aptly apply in consideration of the facts before me, namely:

"The law of nations grants to the occupant such powers as are commensurate with his admitted objects and purposes."

"Military occupation presupposes a hostile invasion as a result of which the invader has substituted his own authority for that of the legitimate Government. The authority of the legitimate power has actually passed into the hands of the occupant."

"Occupation entitles the enemy (occupant) the Sovereignty and gives him civil dominion as long as he retains military possession and the inhabitants who remain and submit must take the law from him as ruler "*de facto*" and not from the Government "*de jure*" that has been expelled."

"He may demand all kinds of services from the inhabitants for the needs of the occupation army except those which will involve the inhabitants in the obligation of taking part in military operations against their own country."

"He may require public officials and inhabitants to take an oath of fidelity to obey his command so long as he retains control of the territory and not to act to his prejudice."

"He may punish as war crimes the disobedience or neglect of his orders or regulations."

"He may requisition anything (in kind) necessary for the needs of his army."

"He may appoint all the necessary officials and clothe them with designated powers, larger or smaller, according to his pleasure."

"The political laws of the ousted Sovereign are held in abeyance and have no effect both *de jure* and *de facto* in occupied territory."

Following are some of the authorities consulted:

The Law of Belligerent Occupation and Effect of Change of Sovereignty;
The Law of the Philippines—Recto C. 2, pp. 18, et seq.;
Oppenheim on International Law, Lauderpacht, 7 ed., pp. 435, et seq.;
U.S. in Rice 4 L ed. 562;—4 Wheaton 17 U.S. 245;
Rose's Notes 902;
Philippine Law Journal 22 1947; College of Law University, Philippines;
The Hague Convention.

As said above, so far as I can see the only thing done by the company was to furnish goods to the enemy on their order or requisition. The authorities mentioned make it clear that the company had no alternative but to supply them, and for doing so cannot, under International Law, be charged with treason or other crime for so doing. In other words, there was no *voluntary* collaboration as provided for in the Rules of the Commission.

In addition to his oral presentation, Mr. Parry has filed an additional argument on the point of collaboration, which coincides with what I have said on the subject of International Law.

Of 70 plant buildings, about 18 were either destroyed or heavily damaged by bombing, as well as their contents. Also some 50 dwellings for workers were destroyed. According to the evidence, the estimated value of the whole plant and contents was \$150,000,000., and the damage claimed is over \$15,000,000., reduced from about \$18,000,00.

The evidence satisfied me that heavy damage or destruction occurred to the buildings in question which I regard as an essential or integral part of the working industry as a whole. However, under the Rules of the Commission it is not the cost or replacement value, but the reasonable market value which must be regarded or taken as the basis of an award of compensation.

As I see the situation, the buildings destroyed would be valuable only as part of the whole plant, and would be of little or no value to outsiders, or others, even in the same business, and at any rate impracticable to operate except as part of the Bata industry. Therefore, looking at the claim from this point of view, I find it difficult to place a satisfactory estimate on the basis of reasonable market value.

I might add that if the cost or replacement value were the basis of valuation, there is no doubt on satisfactory evidence, that the loss would run into several million dollars.

The intrinsic value must therefore be resorted to, which on the evidence, is most difficult to estimate. However, I am of the opinion that an award of \$500,000 in respect to the buildings should be considered fair and reasonable compensation under all the circumstances of the case. (See pp. 72, et seq., of the Report of the Advisory Commission).

There was also satisfactory evidence of loss of, or damage to, stock in trade and machinery. On this portion of the claim I would estimate and allow the sum of \$150,000 as a minimum.

I would therefore recommend an award in favour of the claimant Thomas Bata in the sum of \$650,000, together with simple interest at the rate of 3% per annum from 1st January 1946.

I would also allow a sum of \$600 for cost, being the maximum provided for under the regulations, in the absence of vouchers.

I am satisfied that no compensation has been received from any other source in respect of this claim.

The sum of \$43,927.25 awarded in the Italian claim above mentioned, should be taken into consideration with regard to priorities.

The preparation of this claim involved an enormous amount of work, and I think calls for a tribute to Mr. Parry for his industry, thoroughness, and skill in his presentation.

Ottawa, July 8, 1959.

(Sgd) J. D. HYNDMAN
Deputy War Claims Commissioner

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review his Counsel, Mr. Parry, made a written submission, supported by an oral presentation before me, to the effect that the amount awarded is far from adequate to compensate the claimant for his huge losses in Czechoslovakia, and that the award of \$150,000. for loss or damage to stock in trade and machinery is particularly inadequate.

The learned Deputy Commissioner devoted a very great amount of time, effort, and research in his deliberations concerning this case. On a careful review of his decision, I find myself in full agreement as to the eligibility of the claimant from the point of view of national status, as to the absence of voluntary collaboration which would disqualify the claimant by reason of the provisions of the War Claims Rules, and as to the fact that the claimant suffered very substantial damages in Czechoslovakia by reason of operations of war.

I also find myself in agreement with the submission of Mr. Parry to the effect that the awards recommended are entirely inadequate to provide for the replacement of the movable and immovable properties destroyed or damaged. Unfortunately, the smallness of the Canadian War Claims Fund necessitated the framing of the War Claims Rules so as to exclude replacement cost as a criterion of compensable value.

In view of the careful consideration and extensive research devoted to the case by the learned Deputy Commissioner, I am very reluctant to disturb his findings of fact as to the compensable value of the various branches of the losses in Czechoslovakia. Noting, however, that the \$150,000. award for loss of stock in trade and machinery was referred to by the Deputy Commissioner "as a minimum", I am disposed to find considerable merit in Mr. Parry's contention that this item of the award should be revised upwards, and I would therefore recommend that it be increased to \$225,000.

As to expenses, it has been pointed out to me that the learned Deputy Commissioner made his recommendation without having the benefit of any receipts or vouchers for moneys actually expended in this direction. Mr. Parry has since submitted to me a number of vouchers and receipts which establish the expenditure of substantial sums of money abroad in the preparation of the Czechoslovakian claims. It is also obvious that further substantial sums were expended for the same purpose but are not covered by the vouchers available. On the whole, I am of the opinion that \$1,500. would be a modest, yet reasonable, allowance for compensable expenses.

As regards priority of payment, the claimant has already received an award under the Treaty of Peace with Italy for loss of property in that country in the capital sum of \$47,224.44. He has also been awarded, from the Canadian War Claims Fund, the sum of \$43,927.25 and interest in respect of the same losses in Italy, subject to deduction of the amount paid under the Italian Treaty. As the Italian Treaty award was based on replacement cost, I am of the opinion that the proper sum to be taken into account for purposes of priority is the capital award under the War Claims Rules based on 1939 market values, namely \$43,927.25.

With the foregoing variations I approve the recommendations of the Deputy Commissioner.

I therefore recommend that the claimant be paid:

(a) \$725,000.00 as an award for loss of property in Czechoslovakia, such payment to bear simple interest from 1st January 1946 at 3% per annum. For priority purposes, I recommend that the capital award of \$43,927.25 awarded to

the claimant from the War Claims Fund for losses in Italy be taken into account, and that accordingly the present award be paid in orders of Priority Nos. 6(a), 6(b), and 7;

(b) \$1,500.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish his claim, such payment to be without interest, and not to be taken into account for priority purposes.

Dated this 29th day of July, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9941

Re: Jones

This is a claim for compensation for maltreatment of Harold Bertram Jones, a member of the Canadian Army, who was interned in Japanese-operated prison camps from 25th December 1941 until his death on 1st January 1944, a total of 738 days. The period of internment is confirmed by the records of the Department of Veterans Affairs.

The deceased was apparently unmarried, and his father died in 1941. His mother, Mrs. Marie L. Jones, is confirmed by the Department of Veterans Affairs as having been potentially dependent upon her deceased son up to the time of her death and she was therefore in receipt of a pension on account of his death. On 20th November 1952, Mrs. Jones wrote a letter, which is taken to be notice of a claim for maltreatment of her deceased son. Mrs. Jones herself died on 23rd November 1952, and the claim has since been pursued by members of her family.

If the late Harold Bertram Jones had lived, he would himself have been eligible to receive a maltreatment award of \$1.00 per day for the period of his internment, or \$738.00. If, after his death, his dependent mother had lived, she would have been entitled to receive the same amount. The question to be decided is whether the mother's entitlement died with her, or whether a recommendation can be made for payment to her estate.

The Commission has held that its jurisdiction to recommend a maltreatment award depends on the existence of a living and eligible claimant at the time of the commencement of presentation of a claim. In other words, a claimant eligible within the enumeration on p. 55 of the Right Honourable Advisory Commissioner's Report must have been living at least up to 23rd October 1952. (See Claim No. 10135 AD—CASE No. 9943 *Lawrence Hallett (Boesem)*; also Claim No. 10792 AD—*Robert Forsyth*).

If, however, that prerequisite has been fulfilled, and an eligible claimant has given notice of a valid claim within the prescribed period, I am of the opinion that the survival of the claim should not be adversely affected by the death of the last eligible claimant before he or she has received payment. The vast number of claims on file prevented the Commission from dealing with them all at once, and inevitably delayed the adjudication of many of them for a considerable time. This delay was, however, entirely accidental so far as the eligibility of a claimant or the validity of a claim was concerned, provided that notice had duly been given by an eligible claimant within the prescribed time.

I am therefore convinced that, since the late Mrs. Jones would have been eligible to receive an award of \$738.00 if the Commission had been able to adjudicate her claim immediately upon its presentation, her claim should not

be prejudiced by the incidental fact that she died before the Commission completed the adjudication of her claim. The award for which she was eligible should therefore survive for the benefit of her estate.

Mrs. Jones apparently died intestate, and as she left no other assets, there was no formal administration of her estate. In view of the fact that Mrs. Jones presented a claim in her lifetime, the national status of the beneficiaries of her estate is not material. There are, however, on the file of this claim, a considerable number of bills, mostly for hospital, medical, nursing, and funeral expenses. This Commission has no machinery to ensure a lawful distribution of the amount of the award among the creditors (if they have not been paid), or among the members of the family who paid the bills (if they have been paid), or among the next-of-kin. I therefore have no alternative but to recommend that formal administration in the province of the late Mrs. Jones' domicile be required.

I therefore recommend that there be paid to the Administrator of the estate of the late Mrs. Marie L. Jones the sum of \$738.00 as an award for maltreatment of her son, the late Harold Bertram Jones, whilst a prisoner of war in the hands of the Japanese, such payment to be in order of Priority No. (1-2), and to be distributed in accordance with the laws of the province of her late domicile.

Dated this 7th day of November, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9943

Re: Boesem

This is a claim for compensation for the maltreatment of the late Private Lawrence Hallett, a prisoner of war in the hands of the Japanese, (since deceased).

The information available indicated that the deceased serviceman was unmarried, and that his father died in 1947, having been predeceased by the serviceman's mother. The above-noted claimant is apparently a sister of the late Lawrence Hallett.

The War Claims Rules prescribe that maltreatment awards survive only for the benefit of an enumerated group of "dependents", who are limited to the spouse, children, and parents of the deceased. Survival of such an award for the benefit of the estate of the deceased serviceman is specifically precluded; it would therefore be anomalous to hold that an award might survive for the benefit of the estate of a deceased dependent of a deceased serviceman.

The Commission has therefore arrived at the opinion that a minimum requirement for survivorship of a maltreatment claim is as follows: there must have been alive, at the time of presentation of the claim to this Commission (which, at the earliest would be 23rd October 1952) a person eligible to claim under the principles of survivorship laid down in the War Claims Rules.

In the present case, there was not alive at 23rd October 1952 any person entitled to claim by survivorship, and the present claimant is obviously not entitled to present a claim in her own right.

I have therefore no alternative but to recommend that this claim be disallowed.

Dated this 23rd day of October, A.D. 1957.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9945

Re: Arcand

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has presented further arguments in support of three contentions:

- (a) that the award for personal injury is unduly reduced and should be restored to the amount originally claimed;
- (b) that the award for loss of personal effects is inadequate and should be substantially increased;
- (c) that the claim for loss of school and school equipment should be allowed.

(a) The claimant argues that the computation of expenses arising from personal injury should be based on the actual tariff charged relating to the hospital room in which he is cared for. He complains that the learned Deputy Commissioner has not given any reason which would justify the reduction of compensation for subsistence from \$6.00 a day to \$100.00 per month.

I have examined the evidence carefully, and it appears obvious to me that the reason for such reduction was that the learned Deputy Commissioner did not consider maltreatment to have been the sole effective cause of the claimant's subsequent ailment. The causal connection of maltreatment with the claimant's mental ailment was not diagnosed until more than ten years after his liberation, and it is an obvious inference from the whole of the evidence that his illness is attributable to three factors; namely, his constitutional susceptibility; the nervous strain of internment in a region ravaged by war, accentuated by the destruction of the missionary and educational centre which he had organized and directed; and, to some degree, maltreatment itself. As a matter of fact, there are on file in the claim numerous letters and documents prepared by the claimant which indicate that the impairment of his mental capacity has been by no means continuous since his liberation.

The compensable factor of personal injury excludes the first two causes which I have mentioned and is limited to the extent to which actual maltreatment contributed to, or aggravated, or accelerated, the deterioration of health. I am of the opinion that the award recommended by the learned Deputy Commissioner represents with full equity the extent to which the compensable factor of maltreatment contributed to or accelerated the claimant's incapacity.

(b) As to the claim for loss of personal effects, I am also of the opinion that the award recommended by the learned Deputy Commissioner is as generous as may be warranted by the evidence submitted in support of this branch of the claim. It must be remembered that reasonable market value at 30th June, 1941, with depreciation to the date of loss, is the standard of compensable value set by the War Claims Rules, and this standard of value seems to be fully reflected in the Deputy Commissioner's award, although the goods lost may have had a considerably greater value for the claimant himself.

(c) As to the claim for destruction of school and school equipment, counsel for the claimant argues that there is not a shadow of a doubt that all these goods were the property of Father Arcand, and that the evidence makes this clear without any possibility of a conclusion to the contrary.

Unfortunately, learned counsel's contention is not borne out by the evidence itself. There is a complete absence of any documentary title such as would be convincing proof of the claimant's ownership. On the contrary, there is on file a letter from Rev. Sister Mary de Chantal, dated 23rd April 1953 and

addressed to the claimant himself, indicating a "decision" that Bishop Verzosa should not have disposed of the property in favour of the Maryknoll Sisters "because it was church property". She further suggests that the claimant should consult the successor of Bishop Verzosa, namely Bishop Obviar, to whom the transfer was made. Sister de Chantal was apparently in a position to know that the property belonged to the church and was under the jurisdiction of the Bishop, as she was a member of the Maryknoll Sisters who had been called in to take charge of the Lucena Catholic School in pre-war days.

Her opinion is corroborated by the evidence of Mgr. F.-X. St-Arnaud, who gave evidence at the hearing of the claim before the Deputy Commissioner. This witness states that Abbe Arcand had no title to the property concerned, but that it was the common property of the church. That is, he says, the same thing as to state that it was the property of the Bishop of Lipa. He emphatically repeats the latter statement, and I see no alternative but to give weight to his evidence in the absence of the production of any documentary evidence on behalf of the claimant. It is unquestionably true that the claimant had been instrumental in raising a substantial amount of funds for the organization and maintenance of the school in question, and also that he had contributed to a considerable degree from his private or family funds. That, however, would not confer on him the legal ownership which is a necessary basis of pecuniary compensation for property loss under the provisions of the War Claims Rules. Obviously, the church authorities who were the actual legal owners of the property are not eligible to claim against the Canadian War Claims Fund for its loss, as they were not Canadian within the meaning of the Rules, but special provisions were made for church organizations under the Regulations of the Philippine War Damage Commission.

I have therefore no alternative but to approve the Deputy Commissioner's disallowance of the claim for loss of the school and its equipment.

I have notified the claimant, under the provisions of Rule of Procedure No. 20, that I considered it necessary to make two amendments in the awards recommended by the learned Deputy Commissioner:

(1) As to the date of commencement of interest on the personal injury award, it is necessary to postpone that date until the actual time of the claimant's complete incapacity and admission as a patient in the Hospital of Saint-Jean de Dieu, namely 19th October, 1954.

(2) As to the award for loss of personal effects, the claimant, having resided in the Philippines since 1932, would apparently be eligible to claim an award from the Philippine War Damage Commission. I would estimate at \$600.00 the amount which he could have received from that source by reasonable diligence in prosecution of a claim and I would estimate the date of such potential receipt as 1st January 1950. It is therefore necessary to deduct the amount of such estimated receipt as compensation otherwise provided for, with interest adjustment from the estimated date of payment.

The claimant acquiesces in the suggested postponement of interest date, but submits that the proposed deduction of a potential award from the Philippine Commission should not be applicable.

Counsel quotes the remarks of the Right Honourable Advisory Commissioner on the disappointing results of proceedings before the Philippine War Damage Commission and the inadequacy of awards received by the very small number of Canadian claimants who succeeded in receiving some payments. (Report, p. 14, Item 11).

It is true that there were three obstacles in the way of an alien's securing full compensation from the Philippine Commission for property lost by operations of war, namely:

- (a) the "residence" requirement;
- (b) the inadequacy of the available fund to pay the larger claims in full; and
- (c) exclusion of many classes of property, such as intangible assets, water-craft, curios, and luxury articles.

Within those limitations, however, both eligibility and priority of compensation seem to have been well defined and effectively adjudicated.

The "residence" qualification, imposed on all individual claimants except citizens of the United States or of the Philippines, is defined as including "a citizen of a nation not an enemy of the United States, which nation grants reciprocal war damage payments to American citizens resident in such countries, who was for 5 years prior to December 7, 1941, a resident of the Philippines": (*U.S. Philippine War Damage Commission:—Rules and Regulations*, January 27, 1948; Part 802, S.2(1). The Commission held that nationals of Switzerland, Canada, Australia, Nicaragua, and Sweden were eligible under this qualification. (Supplementary Report of War Claims Commission (1953), p. 26).

As to priority of payment, established claims up to \$500. were paid in full. Claims in excess of that amount were subjected to a reduction of 25% and residual sums in excess of the basic \$500. were paid to the extent of 52.5%

A simple enquiry would have elicited the necessary information respecting eligibility and extent of available compensation. The fact that full compensation could not be secured did not excuse the claimant from seeking such partial compensation as was available by the exercise of reasonable diligence.

The application of the Philippine Commission's formula of priorities would yield a payment of almost \$900 on a claim established at \$1500. Allowing for all contingencies of classification of goods and proof of loss, I still consider \$600 to be a reasonable estimate of the compensation which the claimant could have received, and must therefore be deemed to have received from the Philippine Commission.

With the foregoing variations I approve the report of the Deputy Commissioner and I recommend payment to "The Public Curator for the Province of Quebec", as Committee for Abbe Ulric Arcand, of the following amounts:

(a) \$231.00 as an award for maltreatment of the claimant, Rev. Ulric Arcand, whilst a civilian internee in the hands of the Japanese, such payment to be in Order of Priority No. (1-2);

(b) \$12,000.00 as an award for personal injury of Rev. Ulric Arcand as aggravated or accelerated by maltreatment, such payment to be in Order of Priority No. (1-2) and to bear simple interest from 19th October 1954 at 3% per annum;

(c) \$1,500.00 as an award for loss of personal effects by Rev. Ulric Arcand in the Philippines, such payment to be in Order of Priority No. 3(a) and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of 600.00 deemed to have been received from the Philippine War Damage Commission with adjustment of interest from 1st January 1950;

(d) I recommend that the claim for loss of school property and equipment be disallowed.

Dated this 14th day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

Note: By recommendation of 7th November, 1958, additional maltreatment award of \$115.50 was made pursuant to Order-in-Council P.C. 1958-1467.

CASE No. 9951

Re: International Bronze Powders Limited

.....To be eligible to claim under the War Claims Rules a corporation must successfully meet two tests. It must first be resident in Canada. Secondly, it must be engaged in active trading activities in Canada, either itself or through one or more subsidiaries. If it is so engaged in trading activities in Canada, which are defined as business operations in Canada of an industrial, mining, commercial, public utility, or public service nature, and has complied with the residence test, it can be regarded for the purpose of claiming against the War Claims Fund as a Canadian, but not otherwise.

In the present case it is anything but clear where the claimant resided. The Rules require a claimant company to be resident in Canada within the meaning of the term "resident" as used in the *Income Tax Act*. Thus, for income tax purposes, a company resides where its real business is carried on and the real business is deemed to be carried on where the central management and control actually abide. In its income tax return for the fiscal year ended December 31, 1939, a copy of which has been produced, the claimant shewed its seat of control and management to be situated "Outside of Canada". In its return for the fiscal year ended December 31, 1944, a copy of which has also been produced, the response to the question "Where is the seat of control and management of the Company situated?" is simply "4 Directors in Canada, 2 Directors in the United States". To the further question "Where are Directors' meetings held?" the answer is "Approximately 50% in Canada and 50% in the United States". On both returns the Head Office address of the Company is shown as "c/o Prince Edward Island Trust Co., 119 Richmond St., Charlottetown, P.E.I.", from which it would seem that during both of these periods the claimant did not maintain a separate head office of its own in Canada from which its operation could be carried on. Apart from the preponderance in the number of directors in Canada in 1944 (four in Canada to two in the United States), there is nothing in the 1944 return to indicate where the seat of control and management was situated. It is clear that in 1939 it was situated outside of Canada. It would seem, indeed, that if it was situated in Canada in 1944 this would have been clearly and definitely stated on the return, which is certainly not the case. As I have indicated above the test of residence prescribed by the Rules is residence within the meaning of the *Income Tax Act*. Having carefully considered all of the circumstances I am obliged to conclude that in the present case the residence test has not been met.

The claimant must also establish that it was engaged at the relevant times in active trading activities in Canada, either itself or through one or more subsidiaries, that is, subsidiaries either wholly owned or controlled by it. It was argued at the hearing by Counsel for the claimant that it meets this requirement

since at the relevant times it actively carried on trading activities in Canada through its wholly owned subsidiary, Canadian Bronze Powder Works Limited. This argument, however, would not appear to be supported by the evidence.

First, there is the income tax return filed by the claimant for the fiscal year ended December 31, 1944. On this return, as on that for the year 1939, the nature of the company's business is stated to be that of a holding company, and on both returns it is stated that the claimant held no shares or bonds of Canadian companies at any time during 1939 or 1944. On neither of these returns is there any reference to Canadian Bronze Powder Works Limited as a subsidiary of the claimant. On the 1939 return the only subsidiaries listed are Metallic Products Corporation, Metallpulver A.G., and Etablissements Edouard Seveau. United States Metal Powders Inc. is shown as an associated company. On the 1944 return the subsidiaries listed are Metallic Products Corporation, New York; Etablissements Edouard Seveau, France; Etablissements E. Gottstein, France; and Metallpulver A.G., Switzerland. There is no reference on either return to the Schopflocher company. It will also be observed that on the 1944 return the address of the Metallpulver company is give as Switzerland. I can find no reference elsewhere to Metallpulver as a Swiss company. Elsewhere in the evidence it is repeatedly described as a German company, a German-owned company, and a German holding company. More particularly, there is nothing whatever in either of these returns to indicate or suggest that the claimant was then engaged in trading activities in Canada through a Canadian subsidiary.

Next, there is a letter to this Commission dated February 5, 1954, signed by Mr. P. J. Schopflocher, Vice-President of the claimant, from which I take the following paragraph:

"As far as "trading" activities of the International Bronze Powders Ltd. are concerned, we wish to advise you that our company is a holding company, holding 100% of shares of the different operating companies, like Canadian Bronze Powder Works Ltd., U.S. Bronze Powder Works, Inc., and Malone Bronze Powder Works, Inc., etc. It has therefore not carried on any trading activities in the literal meaning of the word."

This statement is in agreement with the information contained in the claimant's 1944 income tax return. In the return, however, there is no reference to any of the three companies referred to in the letter as subsidiaries of the claimant.

Thirdly, there is a statement dated May 5, 1954, signed by the Director-Taxation, Department of National Revenue, Charlottetown, P.E.I., establishing that from 1939 until 1949 the claimant filed income tax returns under Section 4 (k) of the *Income War Tax Act* and Section 64 of the *Income Tax Act*, and that as from January 1, 1950, it filed and paid income tax as an ordinary corporation. I may here remark that to qualify as a 4(k) corporation for Income Tax purposes a corporation must establish to the satisfaction of the Department of National Revenue that all of its trading or manufacturing operations, or its investment and financial operations, whichever is the case, were carried on entirely outside Canada and its property, except securities and bank deposits, was situated entirely outside Canada. There is no doubt that the claimant did satisfy the Department of National Revenue that it qualified as a corporation that carried on no trading or business operations in Canada either directly or indirectly. Had it not so qualified it would have been liable for income tax as an ordinary corporation. On page 1 of the questionnaire that accompanied its 1944 return there is the following note: "This Company files under Section 4-K of the Dominion *Income Tax Act*."

It was submitted by Counsel for the claimant at the hearing that it qualified under subparagraph (ii) of section 4(k) as an investment and financial company, and not under subparagraph (i) as an industrial or commercial company. I do not see that it is of material difference under which subparagraph it may have qualified. All companies qualifying under either subparagraph (i) or (ii) are classified as foreign business corporations and can be so classified only when all of their business operations are carried on entirely outside Canada and all of their property, except securities and bank deposits, is situated outside Canada.

It was also submitted by Counsel that for income tax purposes the claimant was properly classified as a non-trading corporation, but that for the purpose of claiming compensation from the War Claims Fund it should properly be regarded as a company actively engaged in trading activities in Canada. In the words of Counsel: "the Company qualified under section 4K of the old Income Tax Act *in spite of indirect* trading activities in Canada; and yet the Company still qualifies under the War Claims regulations *because of indirect* trading activities in Canada".

I am obliged by reason of the evidence to reject this argument. If the claimant was carrying on indirect trading activities in Canada it could not properly have qualified under subparagraph (i) of section 4(k). If it carried on any trading activities in Canada at all, either directly or indirectly, it could not have qualified under subparagraph (ii). Under the latter subparagraph its business operations had to be of *an investment or financial nature carried on entirely outside of Canada*. If it qualified under section 4(k), and it is in evidence that it did so qualify, it could not have been engaged directly or indirectly in business operations in Canada, whether such operations were industrial or commercial or of an investment or financial nature. This being the case, and it clearly was the case, it cannot qualify under the War Claims Rules as a company actively engaged, either directly or indirectly, in trading activities in Canada during the period that it qualified as a non-trading corporation under section 4(k).

Having carefully considered all of the evidence I am obliged to find that the claimant has not complied with either of the eligibility requirements, that it was not a Canadian within the meaning of the War Claims Rules at the time of the loss and that it is consequently ineligible under the War Claims Rules to claim against the War Claims Fund.

My comments on the question of the ownership of the 465 shares of the Schopflocher company and on the war operations of that company will, in the circumstances, be brief. I shall deal first with the ownership of the 465 shares.

It is of record that these 465 shares, which had been held since 1935 by the Metallpulver Company, were sold in 1942 by the German manager of Metallpulver to another German company owned or controlled by Eckart. When this transaction came to the knowledge of the claimant after the war it took action to have the sale set aside. Following an agreement of settlement reached between the claimant, Eckart and one Weiss, an order was made by a Restitution Court in Germany which annulled the transfer to Eckart and vested the 465 shares in Metallpulver. The Court which made the order annulling the transfer and revesting the shares was a German tribunal established for such purposes by the Allied Powers after the end of the war.

Ownership of these 465 shares is claimed by the claimant because of its ownership of all of the shares of Metallpulver. There seems to be no doubt that Metallpulver was fully controlled, at least from 1935 to 1939, by the claimant, but following the outbreak of the war all such controls clearly ceased to exist.

Both Metallpulver and Schopflocher had been organized and operated as German-owned companies and were recognized as such by the German authorities. It would appear, in these circumstances, that the sale of the shares to the Eckart company, when it was made, could have been a valid sale under the laws then in force in Germany. This view would seem to be supported by the subsequent proceedings and the setting aside of the sale by the Restitution Court after the war; had it not been a valid sale when it was made these proceedings would not have been necessary. I have no doubt that the effect of the order of the Restitution Court, as claimed by Counsel for the claimant, was to make the sale illegal and void *ab initio*, but whether or not the setting aside of the sale by the Restitution Court can be recognized by this Commission would depend upon whether or not the order of the Restitution Court can be viewed by the Commission as one that can properly be brought before it. The Commission has gone on record to the effect that it cannot take post-war legislation into consideration in connection with war claims. There seems to be no doubt that the German Restitution Court that made the order was created by post-war legislation and that the order itself stems directly from post-war legislation. In these circumstances, and particularly as in my opinion the claimant has failed to establish its eligibility to claim under the War Claims Rules, it would not seem to be necessary for me to make any further comment.

The nature of the operations of the Schopflocher company during the war years has now been established. At the recent hearing Mr. Paul Schopflocher testified that during the war all bronze powder manufacturers in Germany were ordered by the German authorities to produce aluminum powders for use in the manufacture of flares and signals and for other war purposes, and that during the war period the Schopflocher company's plant and facilities would have been engaged exclusively in the production of war materials and materials for the chemical industry for use in the German war effort. At this point I need only remark that the War Claims Rules provide that where there was any voluntary collaboration or cooperation with or assistance to an enemy, in any part of its war effort, on the part of a claimant, whatever his nationality or nationalities, and whether individual or corporate, that claimant should be denied all participation in and should receive nothing out of the War Claims Fund. In the present case the office building that was destroyed and the factory that was damaged by Allied bombing and shellfire, and for which losses compensation is now claimed, were indisputably a German munitions plant that was engaged in manufacturing munitions of war for the use of enemy forces. On behalf of the claimant it has been submitted that the collaboration, cooperation or assistance given by the Schopflocher company was not voluntarily given and that the company could not do otherwise than cooperate with the enemy, not having any choice in the matter. I am obliged, however, to reject this submission. The evidence and submissions that have been presented all lead to the inescapable conclusion that at least from 1939 onward both the Metallpulver and Schopflocher companies were German-owned and German-controlled companies and were so regarded by the German authorities, and there is nothing whatever to indicate that there was at any time any objection or resistance on the part of the management or owners of these companies to their cooperation in the German war effort. Considering all of the circumstances, I am compelled to conclude that the collaboration, cooperation and assistance given to the German war effort by the Schopflocher company was freely and voluntarily given by the company and its management.

Ottawa, October 15, 1958.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted additional materials in support of the contention that the recommendation for disallowance should be reversed, and an award granted. I have had the advantage not only of a very clear written presentation by the claimant's solicitors, but also of a capable oral argument presented by Mr. William S. Tyndale.

The arguments presented stressed the point of view that the claimant was at the relevant times both "resident in Canada" and "engaged in active trading activities in Canada" within the meaning of the War Claims Rules, and it was therefore eligible to present a claim against the Canadian War Claims Fund.

I recognize considerable merit in the contention that the claimant was resident in Canada, but a greater difficulty arises in connection with the question of trading activities. The claimant seeks to distinguish between trading activities as contemplated by the *Income Tax Act*, and as contemplated by the War Claims Rules. Counsel stresses the contention that in its income tax returns the claimant was required to report only its direct shareholdings (that is, only one step in shareholdings) and was not required to show the second and subsequent steps in its indirect shareholdings. As a result, it is contended, although the income tax returns would suggest that the claimant was not a trading company, the claimant actually did engage indirectly in trading activities in Canada through one or more indirect subsidiaries.

I do not consider that this contention should prevail. The tests of residence and trading activities are set up by analogy with the *Income Tax Act* and *Regulations*, and I do not think that the claimant can be heard to contend that it is a non-trading company from the point of view of income tax, but a trading company from the point of view of the War Claims Rules. I therefore agree with the conclusion of the learned Deputy Commissioner that the claimant was not, at the relevant times, engaged in active trading activities in Canada.

I was for a time impressed by the suggestion that, even if the claimant company were not eligible to claim as a corporation, those of its shareholders who could establish Canadian national status at the relevant times might be allowed to claim in their individual rights; and that, although the shareholders had not given the required notice of their intention to claim as individuals, the corporate notice might be taken to include a notice on behalf of the individual shareholders.

A very careful review of the case convinces me, however, that the presentation of such claims would be fruitless. The learned Deputy Commissioner has given, as one of his reasons for recommending disallowance the fact that during the war period the Schopflocher company's plant and facilities were engaged almost, if not altogether, exclusively in the production of war materials and materials for the chemical industry for use in the German war effort.

Counsel for the claimant argues that such activity on the part of the German Company cannot be brought home to the Canadian claimant(s) as being voluntary collaboration. I am unable to agree with this argument. As I pointed out in CASE NO. 10017—*Re: Woelfle*, the word "voluntary" in the context of collaboration or assistance to the enemy does not necessarily imply any initiative on the part of the claimant in volunteering. There is in the present case no evidence to indicate that there was at any time any objection or resistance or protest on the part of the Canadian claimant(s), or on the part of their representatives in the German management of the plants, against the use of the plants to assist the German war effort. That being the case, I am of the opinion that the Canadian claimant(s) must be constructively charged with

voluntary collaboration in the enemy's war effort. It would obviously be incongruous if payments were made from the Canadian War Claims Fund for damage to properties engaged in the production of war materials for an enemy of Canada and of her allies.

The imputed collaboration would apply equally against a claim by the corporate claimant, and against a potential claim by the individual shareholders.

By reason of the failure of the corporate claimant to establish active trading activities in Canada within the meaning of the Rules, and by reason of the imputed collaboration on the part of the corporate claimant and the individuals shareholders, I find myself in agreement with the conclusion of the learned Deputy Commissioner, and I therefore recommend that this claim be disallowed.

Dated this 24th day of February, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9964

Re: T. S. Simms & Co., Limited.

...Under Article 16(b) of the Allied Powers Property Compensation Law, when the Japanese Government consider as a result of their investigation of a claim for compensation that the amount payable to the claimant differs from the amount claimed, the Japanese Government is required to inform the claimant of the amount which they consider payable. Upon being so informed, a claimant who is not satisfied with the amount considered payable by the Japanese Government may under Article 18(a) appeal from this finding within a period of three months and have the claim re-examined by the Allied Powers Property Compensation Examination Committee. The claimant company had therefore the right to appeal in this case but does not appear to have done so. An explanation of its decision not to appeal is contained in a letter dated May 19, 1954, from its solicitors to the Director of the War Claims Branch, (External Affairs Department file no. 9161-FU-40, Vol. I). In this letter it is stated that the amount (U.S. \$31,008) was accepted in view of the current drop in the market price of bristle, that the Japanese Government assessed the claim on the basis of current market prices, and that it was thought as well to accept the assessment on this basis rather than prolong the application by an appeal.

Consideration must therefore be given to the question as to whether the claimant company, by reason of its failure to prosecute an appeal, has received from the Japanese Government a lesser amount of compensation than it should have received and would have received had it lodged an appeal. Such consideration becomes necessary as this Commission is obliged by the War Claims Rules to deduct from an award recommended in such cases not only the amount that a claimant actually receives from an alternative source of compensation, but also the amount that the claimant might have received by diligent and thorough prosecution of a claim against an alternative source. If, therefore, the Japanese Government had, by the application of a mistaken criterion of compensation, reduced the amount of the compensation to which the claimant would be properly entitled, the amount that the Commission would be obliged to deduct would be not only the amount actually received by the claimant, but also the amount that it would have received had it successfully prosecuted an appeal against the decision of the Japanese Government.

Having carefully considered all of the circumstances, I am convinced that in the present case the failure of the claimant company to lodge an appeal is not of great practical importance. It is more than doubtful that the filing of an appeal in this case would have resulted in an increase in the amount of compensation found payable by the Japanese Government. The basis upon which the finding of the Japanese Government was calculated appears to be clearly in accordance with the provisions of Article 15 of the Treaty of Peace with Japan and of Article 5(b) of the Allied Powers Property Compensation Law. Under the latter provision the measure of damage in respect of tangible property that cannot be restituted is the sum of money required at the time of compensation for the purchase in Japan of property similar in condition to that of the former property at the time of the beginning of the war. It would, I think, be difficult to say that the Japanese authority has not in the present case fully complied with the obligation thereby imposed upon it, and for this reason the probability of a successful appeal against its decision would appear to have been remote.

It should be noted also that in its claim before this Commission the claimant company does not seek to obtain the difference between the amount of the claim filed by it with the Japanese Government and the amount of compensation considered payable and subsequently paid (in May, 1954) by that Government. It now claims to be compensated only for loss of interest from the date of that payment to the present time, for which it would have been eligible had there been no Allied Powers Property Compensation Law and had its claim been filed and disposed of under the War Claims Rules. Its claim cannot therefore be considered unreasonable or inadmissible. Of course, had its claim been paid in full by the Japanese Government it is improbable that it would now have any claim at all against the Canadian Fund, but such a happy outcome would have been possible only by reason of the difference in the basis of compensation prescribed by the Allied Powers Property Law (replacement value at time of payment of compensation) and that prescribed by the War Claims Rules (reasonable market value as at June 30, 1941). And since it has been established with reasonable certainty that the reasonable market value of the goods at June 30, 1941, was \$30,492.48, this is the valuation with which I am concerned for the purposes of this report.

My finding, accordingly is that the claimant company sustained a loss due to war operations of goods of the value of \$30,492.48 as of June 30, 1941, and that it is eligible to be compensated for its loss from the Canadian War Claims Fund. My recommendation is that it should be granted in respect of its loss an award of compensation in that amount, with simple interest thereon at the rate of three per centum per annum from January 1, 1946. From this total award, however, there should be deducted as satisfaction otherwise provided the payment of \$30,520 (Canadian) that it has received from the Japanese Government as compensation under the Allied Powers Property Compensation Law, and there should be an adjustment of interest as of the date of that payment, namely May 19, 1954.

December 18, 1957.

(Sgd) JAMES FRANCIS, Q.C.,
Deputy War Claims Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report, and has waived presentation of further materials on review.

As to satisfaction otherwise provided for, I agree with the conclusion of the learned Deputy Commissioner that the chances of obtaining additional compensation from the Government of Japan were too remote to warrant the claimant's prosecuting (perhaps) an expensive appeal. I therefore agree that the proper deduction on this count is the sum actually received from the Japanese Government. The experience of the Commission has usually been that compensation under the Treaty of Peace with Japan is on a more generous scale than that permitted by the War Claims Rules, the former being on a post-war replacement basis, and the latter being on a 1941 market value basis. This is one of the few cases which are complicated by a decline in the market price of the commodity concerned, and for that reason it appears not unreasonable that the compensation allowed by the War Claims Rules, with added interest, should exceed the compensation received under the Japanese Treaty.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that the claimant be paid \$30,492.48 as an award for loss of property in Japan, such payment to be in orders of Priority Nos. 3(a), 3(b), 4(a), 4(b), 5, and 6, and to bear simple interest from 1st January 1946 at 3% per annum; subject to deduction of \$30,520.00 received from the Government of Japan, with interest adjustment from 19th May, 1954.

Dated this 26th day of February, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9969

Re: Dumaine

...I also approve the learned Deputy Commissioner's oral suggestion that, in view of the advanced age and physical condition of the claimant, the award should be administered for her benefit by the appropriate agency of the Department of Veterans Affairs.

I therefore recommend that there be paid to the District Administrator of the Department of Veterans Affairs at Winnipeg for administration for the benefit of the claimant, Mrs. Maria Anne E. Dumaine, \$785.00 as an award for maltreatment of her son, the late Private Joseph Alphonse Gerard Dumaine, whilst a prisoner of war in the hands of the Japanese, such payment to be in order of Priority No. (1-2).

Dated this 24th day of January, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 9977

Re: Broadus

...The War Claims Regulations—paragraph 6(a)—provide that notice of a claim must be received by the War Claims Commission not later than November 30, 1954. The Commission has interpreted such notice to include a written notice given to a department of the Government of Canada and forwarded by that department to the Commission.

The notice alleged to have been given by Mr. Lye on behalf of the present claimant presents two difficulties:

(a) The alleged written notice never reached the Commission, and the claimant is unable to furnish any corroboration of its content or of its receipt by Mr. Leader, or Mr. Porter, or Mr. Maybank;

(b) Even if the writing of the letter and its receipt by either Mr. Leader or Mr. Maybank were fully corroborated and established, it appears to me that a Member of Parliament cannot be regarded as an agent of the Government of Canada, or of any department of the Government, for the purpose of officially receiving notices of claims against the War Claims Fund.

The foregoing difficulties seem to me to be insuperable, and I am firmly of the opinion that the Commission must be regarded as having had no notice of claim until after 30th November 1954. I therefore see no alternative but to recommend that this claim be disallowed.

Dated this 30th day of January, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 66 (IT) 9978

Re: Dizazzo

By my Report dated 20th October 1958 I confirmed the recommendation of Deputy Commissioner Francis for disallowance of this claim on the ground that adequate proof of ownership of the property at the time of damage, or of the cause and extent of the damage sustained, had not been presented. I accordingly found it unnecessary to review the opinion of the learned Deputy Commissioner that the claimant had lost his eligibility to claim by reason of his having transferred the title to the property without reserving the right to receive compensation for war damages.

Subsequently, in CASE NO. 69 (IT) 10021—*Re: Olindo D'Errico*, I had occasion to consider the latter point, and I there held that in claims under the Treaty of Peace with Italy it is the owner of the property at the time of the damage, and not the subsequent transferee of the damaged property, who retains the right to compensation. My decision in that case was based on the second sentence of Section 9(b) of Article 78 of the Italian Treaty, which provides: "If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this article, without prejudice to obligations between the transferor and the purchaser under domestic law."

It was on the basis of the above mentioned decision that I acceded to the present claimant's later request to have his case re-opened for the purpose of enabling him to present more adequate proof of ownership, circumstances of loss, and quantum of damage. I accordingly referred the case to Deputy Commissioner Hyndman for reconsideration in the light of additional evidence submitted.

Dated this 1st day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

NOTE:—Award approved.

CASE No. 9987

Re: Douglas

...She could, indeed, as other claimants in a similar position have done, have established her claim under the provisions of the Philippine Rehabilitation Act. Had she made her claim under that Act her loss would have been investigated by a competent authority having the facilities to make the investigation and to establish the loss and the amount thereof. Also, any award of compensation that she might have been granted under that Act would, under the War Claims Rules, have had to be considered as satisfaction otherwise provided in respect of her present claim, and would have had to be deducted from any award of compensation that might be awarded to her from the Canadian War Claims Fund in respect of the loss.

Under our Rules, the general principle is that claims should not be admitted against the Canadian Fund to the extent that the claimant has or could have received payment from another source, with this proviso, that if the claimant by reason of his own neglect or default has failed to receive or has forfeited or lost his eligibility to receive payment from another source he is to be deemed to have received payment. In the present case there was the source referred to above, the Philippine Rehabilitation Act authority, from which Mrs. Douglas could have received compensation in respect of the loss of her personal property. It may well be that she was not aware that she could have claimed compensation under that Act and for that reason failed to make her application. I think, however, that she should have made some inquiry and that she should not have allowed the matter to remain in abeyance for so many years...

...For the reasons stated above her claim for compensation for loss of personal property should be disallowed.

March 7, 1958.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

Note: *Disallowance confirmed by Chief War Claims Commissioner, 11th April 1958.*

CASE No. 10008

Re: Sister Marie-Agnes

Deputy Commissioner Marion has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. I have also notified her, in pursuance of the provisions of Rule of Procedure No. 20, that I considered it necessary to reverse the Deputy Commissioner's recommendation for a personal injury award, and to recommend disallowance of that branch of the claim. On review, the claimant has submitted additional arguments in support of the contention that the award recommended by the learned Deputy Commissioner for personal injury should be maintained, or increased. I have had the benefit, in this connection of an oral presentation made by the claimant's counsel, M. Jean Remillard.

After a very careful consideration of all aspects of the case, I am unable to agree with the learned Deputy Commissioner's conclusion that the evidence discloses a case of compensable personal injury.

The only medical evidence submitted is that of two practitioners who treated the claimant in 1955 and succeeding years for a variety of ailments including sinus trouble; rhinal atrophy; general dehydration; deafness;

avitaminosis; bad circulation and pernicious anemia. The opinions of Dr. Busière and Dr. Rolland as to the cause of the claimant's ailments are highly speculative. In my opinion, it would be impossible to assign such ailments in 1955 with any certainty to the causation of the claimant's experiences during a relatively short period of internment fourteen years previously.

Undoubtedly, the claimant has suffered a large variety of ailments and has incurred very considerable expenses and pecuniary loss as a result. The War Claims Rules, however, prescribe that personal injury to be compensable must be a direct result of war operations or of maltreatment and that no compensation can be paid for damage which is too remote. The Rules go on to prescribe that the general principles upon which compensation for personal injuries should be awarded are in accordance with the ordinary principles applied in our civil courts for the assessment of resulting personal loss. I am entirely unable to conclude from the evidence presented in this case that the claimant's illnesses were directly caused or even aggravated by maltreatment at the hands of her enemy captors. With considerable reluctance from the compassionate point of view, I am constrained to reverse the recommendation of the learned Deputy Commissioner for a personal injury award, and to recommend disallowance of that branch of the claim. I approve his recommendation for an award for maltreatment. Counsel urged that the amount of the latter award might be increased, but a careful review indicates that the amount recommended corresponds with that awarded in cases of detention for a similar period and under similar circumstances.

I therefore recommend that the claimant be paid \$100.00 as an award for maltreatment of herself whilst a civilian internee in Europe, such payment to be in order of Priority No. (1-2).

I recommend that the claim for personal injury be disallowed.

Dated this 18th day of March, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10011

Re: Andrews

These claims were consolidated for hearing before Deputy Commissioner Bird. The claim of Calumet International Limited was rejected as such, because that claimant was solely a holding company and carried on no active trading operations; it was therefore unable to establish Canadian national status. An amendment was, however, allowed, whereby Mr. Andrews was substituted as claimant in respect of the original Calumet International Limited claim, he being the equitable owner of 17,393 of the 20,000 issued shares of the corporation. It is to be noted, that the claim filed by Calumet International Limited, in respect of which Mr. Andrews is now substituted as claimant, is based on 17,393

20,000
of the total loss alleged to have been sustained by the company. This apparently means that the company was originally claiming in respect of Mr. Andrews' equitable shares only, the owners of the balance of the shares being ineligible to claim.

Deputy Commissioner Bird has submitted to me his findings and recommendation for the disallowance of all three claims, with his reasons therefor.

The claims have been exceptionally well documented and presented, and I have had the advantage, on review, of a very able oral argument submitted in Ottawa by Mr. Ian A. Shaw.

Since the report of the learned Deputy Commissioner, the International Tribunal has completed its arbitration of the disputes between the claimants and the Government of Japan, and has recommended awards substantially greater than the settlements originally offered by the Government of Japan. On Mr. Shaw's submission, the arbitration awards would approximate from \$136,832.00 to \$150,837.00, the difference depending on the convertibility of Japanese yen. Such awards would be the equivalent of a total award in the vicinity of \$100,000.00 to \$107,000.00 from the War Claims Fund, carrying interest from 1st January 1946 at 3% per annum. The capital claims submitted by the three original claimants totalled \$221,982.40.

Mr. Shaw relies strongly on the comments of the learned Deputy Commissioner as to the credibility of the claimants as witnesses, as to the excellence of the documentary evidence submitted, and as to the reasonable basis of values shown in the inventories. The learned Deputy Commissioner concludes his summary of these comments by stating that he regards the estimates as being fair and reasonable.

Mr. Shaw goes on to urge that either the foregoing comments of the Deputy Commissioner should be accepted as a finding that the amounts claimed represented the compensable values of the goods lost, or else that the cases should be referred back to the Deputy Commissioner for a specific finding of such compensable values. It must, however, be recognized that the values placed on assets by an owner for inventory purposes, however fair and reasonable such values may be from that point of view, are apt to be widely different from the "reasonable market value" which this Commission must adopt as the criterion of compensable value.

As the learned Deputy Commissioner pointed out, the basis of replacement value prevailing under the Japanese Treaty is in almost all cases more generous than the basis of compensable value prescribed by the War Claims Rules, even when interest in the intervening period is added to the latter. In this connection, the Deputy Commissioner refers to the disallowance of claims in CASES NOS. 6423—*Re: Saint Vierge*, and 9303—*Re: Franciscans*.

Only two exceptions from that tendency have been noted and recognized by the Commission. One exception was the case of a commodity whose market value had very substantially depreciated from 1941 to the time of the Treaty award. The other exception concerned a group of claims for clothing and belongings of a strictly personal nature, where expenses and contingencies of proof might outweigh the benefits of compensation under the Japanese Treaty; in some of this group of claims the Commission allowed a modest margin not exceeding \$200.00 in any case.

Mr. Shaw argues that the present claimants should be regarded as an exception to the general tendency, particularly in respect to the items of used machinery and equipment. He points out that in 1941 imports of such articles into Japan had practically ceased and all unused machines and equipment of those categories had been sold. As a result the values of used articles rose to fantastic heights in 1941 and probably became even higher during the war years. He therefore urges that in arriving at the reasonable market value of such used commodities, they should not be subjected to a formula of depreciation comparable to that which was made applicable to compensation values under the Treaty of Peace with Japan.

While there is some merit in Mr. Shaw's argument on this point, there does not appear to be any evidence that prices of used commodities had by 30th June 1941 risen as sharply as he contends. Though the growing scarcity of commodities unquestionably arrested, or even reversed, the normal tendency to depreciation of used goods, the inference from available materials is rather that that process had not reached its height by June 1941, which is fixed by the War Claims Rules as the date for determination of reasonable market value. It may be admitted that the growing scarcity of commodities was then beginning to have some effect and that the depreciation in value of some classes of used articles may have been arrested to some extent. On the other hand, an examination of the inventories submitted in support of the claims reveals numerous large items which would not belong to those classes of articles, but whose value might have been less in a period of impending war than in time of normal peace. There are, as a matter of fact, numerous large items of highly personal and luxury character, for which, in the absence of strong corroborative evidence as to their market value, the Commission would be able to allow only a small fraction of the amounts claimed. Among such items, I might instance seven shotguns and rifles claimed at \$1,225.00 and a stamp collection claimed at \$36,500.00. If the Japanese Treaty awards were apportioned *pro rata* among the various individual items of the claims, the result would be that Mr. Andrews would be receiving over \$900.00 for the guns and rifles, and over \$27,000.00 for the stamp collection. This Commission's awards for those items would be very substantially smaller, and a similar comparison might be made with reference to numerous other articles. The close examination of the whole of the inventories would indicate that a great many of the articles listed would have a market value very substantially below the values claimed. It is also to be inferred that although the tendency towards depreciation of new goods might be arrested or even reversed by their growing scarcity, this tendency would, in the case of used goods, be counteracted by the depreciation owing to use in the period intervening between 30th June 1941 and the actual date of loss.

As to the uncertainty of conversion of the Japanese Treaty award into Canadian currency, the Regulations are admittedly complex and vary from time to time. The Commission is informed that remittances to non-resident claimants are authorized in foreign currency, subject to a discretion in the Bank of Japan, the outcome of which discretion would be uncertain until the claimants have requested payment. In any case, I do not think that difficulties of conversion can be taken into consideration by this Commission. The claim is made in respect of loss of property in Japan, and if compensation is available in that country, the War Claims Fund cannot be held to guarantee the transfer of that compensation to Canada.

After a very careful examination of the evidence and other materials so fully and competently presented in this case, I am convinced that the compensations now available under the Treaty of Peace with Japan are at least as generous as any awards (including interest) to which the claimants might otherwise have been entitled under the War Claims Rules.

I therefore approve the recommendation of the Deputy Commissioner without variation, and I recommend that each of these claims be disallowed.

Dated this 14th day of October, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10017

Re: *Woelfle*

...At the outbreak of World War II he was notified by the German authorities that he was required to serve with Germany's armed forces. He was informed that under the law then in effect he would have to serve because he was born in Germany, his parents were of German nationality, and he was living in Germany. He was also informed that he might refuse to serve but that in that event he and his family would be interned and their property confiscated. As he states: "there was nothing else to do but to serve. The result was that in the end I became a prisoner of war and returned to Germany near the end of 1947." His recital of these events ends with the statement that because of war conditions he lost values to the amount of \$50,000.00 or more.

The conditions in which the loss was incurred are briefly stated in his letter of February 27, 1958. He there states that he was enlisted in the German forces, subsequently became a prisoner of war and did not return to Germany until near the end of 1947. He adds:

"However after being released I found that my business was ruined. Through conditions of that war I have lost values to the amount of 50,000 dollars or more."

This would indicate that the loss was due to "conditions of war" and not to actual operations of war. If such is the case Mr. Woelfle would not have an admissible claim under the War Claims Rules. Unless the loss was *due directly to actual operations* of war the claim would not be a compensable claim under the Rules. Losses due to operations of war are losses caused by hostile physical operations, that is, by bombing, shellfire or otherwise, by armed forces engaged in an actual theatre of war or by looting in the immediate area of an actual theatre of war. All other losses, and they are manifold, are losses *due to the existence of a state of war* and they are not compensable under the War Claims Rules.

Innumerable persons in all of the countries that were engaged in the war sustained losses and in many cases very substantial losses because of the existence of a state of war. Thousands of persons sustained losses of profits and revenues from their businesses and investments because of conditions that arose out of the war. Others found that their businesses and occupations had vanished. Others had their properties and businesses expropriated or nationalized because of the war emergency. Still others sustained losses because they were required by the laws of their countries to serve in the armed forces and were thereby unable to pursue their normal occupations. Many others sustained substantial losses because of worldwide monetary inflation. In none of these cases has it been found possible to compensate the victims of such losses; their number is legion and their losses have been too numerous and too farreaching.

It is obvious, therefore, that unless the loss that Mr. Woelfle claims to have sustained was caused directly by operations of war or by looting in the immediate area of actual war operations his claim would not be an admissible claim under the War Claims Rules. If his claim arises because of the existence of a state of war he is one of the multitudes of persons who have similarly sustained losses that are inevitable in the presence of the existence of a state of war and for whom no form of compensation is known to exist.

Let us assume, however, although it has not been established, that his loss was caused directly by actual operations of war such as I have described above. Would he, in the circumstances set forth in the second and third paragraphs of this recommendation, be eligible to claim compensation for his loss from the

Canadian War Claims Fund? The Rules applicable to situations such as that described by Mr. Woelfle and by which this Commission is bound are clear and, I think, beyond dispute. The first of these Rules is as follows:

"During the war persons who in addition to being Canadians also possessed an enemy nationality were faced with difficult problems arising from a conflict of loyalties and as a natural result there were some *who chose* to give collaboration, cooperation or assistance to an enemy. There is no need to formulate a special rule for this group because they would come within a general rule which I propose to recommend and, for purposes of convenience, at this stage of the report.

"This general rule is that where there was any voluntary collaboration or cooperation with or assistance to an enemy, in any part of its war effort, on the part of a claimant, whatever his nationality of nationalities, and whether individual or corporate, that claimant should be denied all participation in and should receive nothing out of the War Claims Fund."

The above general rule was recommended by the Advisory Commission on War Claims and was subsequently adopted by the Government of Canada and forms part of the War Claims Rules. The second Rule which is applicable to the situation in the present case and which also is a part of the War Claims Rules, is as follows:

"It seems to me that while possession of dual nationality by a claimant should not in itself bar his claim, no consideration should be given to a claim from a Canadian who at time of loss possessed a second nationality and who was at that time domiciled in the country of his second nationality, subject, however, to this one exception, that the claim of such a Canadian upon whom loss or injury was inflicted by enemy authorities *on account of his being a Canadian* should be admitted to the extent, but only to the extent, of the loss or injury so inflicted."

It cannot be disputed that the rules that I have quoted are eminently fair to all Canadians, whatever the situation they may have found themselves in during the war. Any Canadian in enemy territory who had loss or injury inflicted upon him by an enemy authority *because he was a Canadian* is eligible to receive compensation from the Canadian Fund to the extent of such loss or injury. Now, what was the situation in the present case? I quote from Mr. Woelfle's letter of February 27, 1958:

"At the outbreak of World War II I received a letter from the German Government enlisting me to the German forces. I was given to understand that, according to a new law, I would have to serve because I was born in Germany, my parents were Germans and that I live in Germany. *I was further told that I may refuse to serve, but in case I do so, I and my family would be interned and our property would be confiscated.* There was nothing else to do, but to serve."

This is indeed a frank and apparently fair appraisal of the situation in which Mr. Woelfle unfortunately found himself. It is obvious, however, from Mr. Woelfle's own statement, that any loss he may have sustained as a result of his enlistment was not inflicted by the German authorities on account of his being a Canadian. On the contrary, it is clear that he was required to serve because he was born in Germany, his parents were Germans and he was living in Germany. It was apparently made clear to him also that he could refuse to serve but in that event he and his family would be interned and their property taken from them.

Here, indeed, is the difficult problem arising from the conflict of loyalties referred to by the Advisory Commissioner in his Report—in this case a conflict between loyalty to Canada, loyalty to Germany, loyalty to one's family and possessions, and loyalty to oneself. I would think that, in this rather difficult situation, if Mr. Woelfle had chosen to be loyal to Canada and had had faith in Canada he would have refused to serve in the German forces. Had he done so he would no doubt have been interned and his property sequestered. He would not have been the only Canadian to have been interned by the enemy; he would, indeed, have been one of the thousands of loyal Canadians who were interned in Europe and elsewhere by the enemy during the war. Had he been so interned and suffered a loss or injury by reason of the act of the enemy authority he would now be eligible under the Rules for compensation to the extent of his loss. He did not, however, so choose—he chose, rather to serve with the German armed forces. Evidently, he cannot have it both ways. He was faced with a difficult problem arising from a conflict of loyalties and as a natural result he chose to give collaboration, cooperation and assistance to an enemy. Under the general rule that I have quoted above this bars him from participation in the Canadian War Claims Fund.

The unfortunate sequence is succinctly set forth by Mr. Woelfle in the same letter. He states: "The result was, that in the end I became a prisoner-of-war and returned to Germany near the end of 1947 after being released I found that my business was ruined. Through conditions of that war, I have lost values to the amount of 50,000 dollars or more."

It is of interest to note that he became a prisoner of war. That would indicate that he had served in the front line of battle and at least on one occasion had come into contact with the forces of the Allies. Now, it is well known that the German armed forces had reasonably high standards of service, and it would seem unlikely that they would place in the front line of battle an unwilling and reluctant conscript who could be suspected of loyalty to Canada. It would seem more likely that such a conscript would be found in some less exposed situation in which his loyalty conflict would not endanger the safety of his comrades. As he found himself, however, in the line of battle it would seem that the German authorities had no reason to question his loyalty to Germany.

It would also seem to follow that when he became a prisoner of the Allies his position would thereby have improved. The conflict of loyalties must then have ended and the problem arising therefrom would have been resolved. He could then have declared himself a British subject and a Canadian but he does not appear to have done so. He may, of course, have had good reason not to so declare himself. It was at best a rather awkward situation in which discretion may well have seemed to be the better course. Nevertheless, he did have that opportunity but does not appear to have availed himself of it.

In his letter of March 10, 1958, Mr. Woelfle states that he never enrolled voluntarily in the German Army but was forced to do so, that his case was the subject of an inquiry made by the Department of Citizenship and Immigration and he was able to prove that he had been forced to serve. He states that the Department of Citizenship and Immigration found that there were mitigating circumstances in his case and that for this reason his Canadian citizenship was not liable to revocation. He suggests that there is a conflict of opinion on his case between the Citizenship authority and this Commission and he "refuses to believe that there are two kinds of laws in Canada."

There is, however, no such conflict of opinion as he suggests. This Commission has not to my knowledge at any time questioned his Canadian citizenship. Based upon the Rules by which it is bound and which I have set forth above, it has advised him that it might be difficult for him, in the circumstances that he

had described, to establish an admissible claim. It is clear from the information that he has given the Commission that when he was notified that he was required to enlist in the German Forces he was faced with a difficult problem arising from a conflict of loyalties and, that, rather than face the very unpleasant consequences that would result from his refusal to serve, he chose to serve and did serve with the German Forces. By doing so he collaborated, cooperated with and gave assistance to the enemy in its war effort, and by doing so he forfeited any eligibility he might otherwise have had to claim against the Canadian War Claims Fund. There is no question of his citizenship here. In this respect he is in precisely the same situation as a number of other Canadians who found themselves faced with the same problem and who chose to collaborate with the enemy.

Having carefully considered all of the circumstances I cannot help but conclude that (1) Mr. Woelfle's loss is a loss arising from the existence of a state of war as explained above, and that (2) in the alternative, should he have a claim that would otherwise be admissible, he forfeited his eligibility to claim against the Canadian War Claims Fund by choosing to serve with the German Forces when he could have refused to do so. There is no doubt that he was then faced with a difficult problem but it is precisely the problem envisaged by the Rules and, as I have said, this Commission is bound by the Rules. In all of the circumstances I am obliged to recommend that his claim be not admitted.

March 25, 1958.

(Sgd) JAMES FRANCIS, Q.C.
Deputy War Claims Commissioner

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report. On review, he has submitted an elaborate statement and argument in support of the contention that the decision should be reconsidered and an award granted. He maintains both that a substantial portion of his losses were caused directly by actual operations of war, and that he did not voluntarily collaborate with, or assist, the enemy in its war effort. He corrects the inference of the learned Deputy Commissioner that he had served in front line action by indicating that he had been assigned to take charge of the units of the German Military Police stationed in Jersey and Guernesey.

Apart from that discrepancy, which in my mind makes no difference to the legal situation, the whole case is so clearly and admirably expressed by the Deputy Commissioner that I need add very few comments.

It is, I think, inconceivable that the German Army would assign such a responsible military post to a man who might even be suspected of sympathy with the Canadian or British enemy (however exemplary his conduct in that post may have turned out to be).

Nor does the word "voluntary" in the context of collaboration or assistance to the enemy imply any initiative on the part of the claimant in volunteering. It was open to him to insist on his status as a Canadian national. The consequences for himself and his family might have been unpleasant in the extreme, but in that case he could at least have sought compensation from the Canadian War Claims Fund. Instead, as the learned Deputy Commissioner points out, he virtually chose to accept a military assignment in the enemy's war service.

It would be preposterous if a claim against the Canadian War Claims Fund were to be allowed in the circumstances.

I have no alternative but to approve the report of the Deputy Commissioner, and I recommend that this claim be disallowed.

Dated this 10th day of November A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 69 (IT) 10021

Re: D'Errico

Deputy Commissioner Francis, to whom this claim was referred, has submitted to me his findings and recommendation, with his reasons therefor.

The learned Deputy Commissioner recommends an award of 128,566.66 lire for loss of movable property. On the other hand, he recommends disallowance of the claim for damage to immovable property because, although "it has been established that the claimant was the owner of these properties at the time the damages were sustained", the parcels of land concerned were sold and transferred by the claimant in October 1947 to four respective transferees, together with ownership of "all the rights and privileges of the claimant in the properties, of every kind."

Whether, or not, a transfer of that nature is sufficient to divest a claimant of the right to compensation is a question which arose also in CASE NO. 66 (IT) 9978—*Ernesto Dizazzo*. It was, however, unnecessary for me to decide the question in that case, as I approved the disallowance by the learned Deputy Commissioner on the ground that adequate proof had not been presented either of the ownership of the property at the time of the damage, or of the cause and extent of the damage sustained.

In the present case, it would seem unreasonable that the claimant would include, in a sale of lands for 90,000 lire, a right to compensation which his own geometrician valued at 2,429,200 lire, and which the officials of the Italian Department of Finance later valued at 320,480 lire. And, whatever may have been the effect of the transfer at domestic law, the situation so far as claims for compensation under the Treaty of Peace with Italy are concerned seems to be clarified by the second sentence of Section 9(b) of Article 78 of the Treaty itself, which provides: "If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this article, without prejudice to obligations between the transferor and the purchaser under domestic law." In other words, in claims under the Italian Peace Treaty, it is the owner of the property at the time of the damage, and not the subsequent transferee of the damaged property, who retains the right to compensation.

According to the learned Deputy Commissioner's findings, both the claimant's ownership of the properties at the time of the damages, and the fact of damage during military operations between October 1943 and May 1944, have been duly established.

As to the quantum of damage, it was estimated by the claimant's geometrician at 2,429,200 lire. This estimate was submitted for verification to the Italian Ministry of Finance, and the damage was investigated on the spot by the Ministry's technical officers, who reported an estimate of the damages at 320,480 lire. The latter report took into account the nature of the soil, the damage to the land and plantations, the type and number of the trees destroyed, and the loss of the crop for the year 1943/44. The Minister goes on to state that the

difference between the amount claimed and the assessment made by the competent technical office is due mainly to the fact that the interested party's claim was not confirmed by expert appraisal on the spot.

In nearly all claims for war damages in Italy, the Commission has found similar differences between the estimates of the claimants' surveyors and the official assessments of the technical office of the Italian Ministry of Finance. In most cases, the Commission has preferred the official estimate to that of the privately employed geometrician. As Deputy Commissioner Francis said in Case No. 56 (IT) 9917—*Estate of Francesco Del Duca*: "The Italian official estimates are made by Government officials who are expert in this field, are fully familiar with conditions in Italy, and have ready access to records of property values and building and other costs that are not readily available elsewhere. For these reasons I have usually accepted the official estimate as a more realistic and accurate appraisal of the damages actually sustained than those of the claimant's surveyor."

That, as I have intimated, has been the almost invariable practice in determining the quantum of war damage suffered in Italy, and I see no reason for departing from that practice in the present case.

The report of the Ministry of Finance does not indicate the date at which the damage was assessed, but I think it is fair to assume that the estimate was based on valuations substantially corresponding to those which prevailed at 27 October 1952. I would therefore assess the compensable loss suffered by the claimant in respect to the immovable property at two-thirds of 320,480 lire, or a resultant 213,653.32 lire.

Added to the 128,566.66 lire recommended by the learned Deputy Commissioner for loss of movable property, this gives a total compensable loss under the Treaty of Peace with Italy of 342,219.98 lire

Having reviewed the Deputy Commissioner's report, I approve his recommendation for an award respecting loss of movable property, and I reverse his recommendation for disallowance of an award for damage to immovable property.

I accordingly recommend that the claimant be now paid, pursuant to the War Claims (Italy) Settlement Regulations, the following amounts:

- | | |
|---|--------------------|
| (a) Two-thirds of the property loss of 513,330 lire valued as of 27th October 1952 | lire 342,220 |
| (b) One hundred percent of award in respect of fees and costs incurred by claimant in establishing claim, also valued as of 27 October 1952 | lire 50,000 |
| | <hr/> lire 392,220 |

Notwithstanding payment of the awards hereby approved, this recommendation is subject to further review in conjunction with the claimant's claim for payment of the balance of compensation for which he may be eligible from the Canadian War Claims Fund.

Dated this 11th day of December, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Advisory Commissioner

Note: Award increased about 50% on supplementary review, 10 March 1959.

CASE No. 10022

Re: L'Ordre des Dominicains

In the course of the proceedings on CASE NO. 9541—*Rev. Rosaire Louis-Marie Lebel*, Deputy Commissioner Choquette dealt with a claim made on behalf of the Reverend Dominican Fathers or Preaching Brothers of Canada. The learned Deputy Commissioner recommended an award of \$2,000 for moveable property belonging to the monastery at Sendai, which was alleged to have been destroyed by bombing.

The claimant has been furnished with a copy of the Deputy Commissioner's report.

I have also notified the claimant, pursuant to the provision of Rule of Procedure No. 20, that I considered it necessary to reverse the Deputy Commissioner's recommendation, and to recommend disallowance of this claim for the reasons which will hereinafter appear:

Counsel for the claimant has submitted a number of general arguments relied upon in cases of a somewhat similar nature, and has specifically urged that the indemnity awarded for loss of property is far from sufficient, and that such indemnity should not be subject to deduction of indemnity which might have been received under the Treaty of Peace with Japan.

There does not seem to be any substantial evidence tendered in support of this particular claim. Apart, however, from the insufficiency of the evidence, there is the fact that the Order did not make a claim for compensation from the Government of Japan under the Treaty of Peace with that country.

The commission has always taken the view that in such circumstances there is an onus on a potential claimant of making some reasonable inquiry as to the availability of a source of alternative compensation, such as that provided by the Japanese Peace Treaty. In addition, it appears that the provisions of the Treaty were a matter of fairly general knowledge both in Canada and particularly in Japan. From the legal point of view I consider that the foregoing factors would be sufficient to oblige the Commission to deduct from any award recommended on the present claim the amount which might be estimated as available compensation under the Japanese Treaty if a claim had been made and prosecuted with reasonable diligence.

It is also to be noted, however that the availability of an award from Japan was brought to the notice of the Dominican Fathers through two channels:

- (a) The Canadian Embassy in Japan sent particulars of the relevant provisions of the Treaty and of the procedure to be followed to Rev. Father Gabriel Bertrand Derouin who had been appointed as the mandated representative of the Bishop of Sendai for the diocesan corporation of Sendai. Some of the particulars apparently reached Father Derouin after he had been transferred from Sendai, though he had not furnished the Canadian Embassy with information to the effect that he was transferred. At a considerably later date, Father Derouin informed the Embassy that he had received the particulars forwarded to him, but that in view of his transfer he believed that he had handed them on to Rev. Father Louis Marie Lebel, then Dominican Superior General in Japan.
- (b) The War Claims Branch of the Office of the Custodian, Department of Secretary of State at Ottawa, was notified by Rev. Father Rosario Renaud of the formation of a "Comité national d'entraide missionnaire du Canada" of which he was appointed director. He furnished the War Claims Branch with an official statement outlining that the purpose of the "Comité national d'entraide missionnaire du Canada" was to assist all Canadian religious corporations and/or their

members who had suffered losses in the Second World War, including the Far-East and Japan specifically, in establishing their claims. From a list subsequently furnished by Father Renaud, it is clear that the Dominican Fathers were one of the religious Orders which constituted the membership of "La Société d'entraide missionnaire". On 6th August 1953, the War Claims Branch forwarded to Father Renaud a copy of "La loi d'indemnisation pour les biens des puissances alliées du Japon", which Father Renaud has acknowledged on August 12, 1953.

Though I consider the foregoing notifications to have been in the nature rather of courtesies than of legal requirements, they appear to lend strong moral support to the position which the Commission has taken in respect to satisfaction otherwise provided for under the Japanese Peace Treaty.

Under the terms of the Japanese Treaty, the quantum of damages payable for loss or destruction of tangible property which cannot be restored to the owner is based on the sum of money required at the time of compensation for the purchase in Japan of property similar in condition to that of the former property at the time of the beginning of the war. The experience of the Commission is that such a basis of compensation is more generous than the criterion prescribed by the War Claims Rules, namely the market value at 30 June 1941, with deduction for depreciation, if any, up to the time of the actual loss. The only specific exception which we have noticed is the case of a commodity whose post-war market value was lower than the market value in 1941. The Commission has, however, recognized that in cases of small claims for loss of objects of a personal nature, certain difficulties of proof, expenses, and other contingencies might militate against the securing of full compensation from the Government of Japan, and we have therefore allowed an exemption not exceeding the capital sum of \$200 from the application of the deduction of compensation otherwise provided for in respect to such claims. I am doubtful if such an exemption would be applicable to a case of the present type, as it lends itself to reasonably exact proof under the Japanese Treaty.

I am therefore of the opinion that the present claim should be disallowed, as the compensation available under the Japanese Treaty would be greater than that available under the War Claims Rules including interest.

This opinion is in accordance with my decision in CASE NO. 9303—*Franciscan Order*.

For the foregoing reasons I recommend that this claim be disallowed.

Dated this 6th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10028

Re: Ellenson

Deputy Commissioner Hyndman has submitted to me his findings and recommendation, with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's report and, on review, has submitted an argument in support of the contention that the award recommended should be increased.

As his first ground of appeal, the claimant submits that the award should have taken into consideration such fixtures as are normally provided by the tenant of a French apartment, though in this country they would be furnished by the landlord and regarded as part of the immovable property. I think that

the learned Deputy Commissioner was prepared to accept the contention that the present claimant had provided a large number of such fixtures and equipment in his Paris Apartment, but I agree with his conclusion that the evidence does not sufficiently establish the allegation that such fixtures were looted or otherwise destroyed or damaged by operations of war.

The second, and main ground of appeal on behalf of the claimant is that the clear intention and purpose of the Deputy Commissioner's award was to compensate the claimant in the sum of \$1,220.00 over and above the award granted by the French authorities, and that that intention would be defeated by deducting the amount of the French payments from the recommended award. The claimant urges that the total of the present award should be increased to \$6,502.00, with the usual interest, subject to deduction of moneys received or to be received from France.

I agree with the claimant's submission as to the general intention of the Deputy Commissioner's award, and as to the danger of that intention being defeated by the finalization of the Deputy Commissioner's report in its present form. The net result would apparently be that the claimant would receive nothing from the War Claims Fund.

On the other hand, I do not consider that the amount now suggested by the claimant can be implemented because that would have the effect of enabling the claimant to secure an advantage from the wartime and post-war fluctuations in the value of currency and exchange. For purposes of computation, under the provisions of the War Claims Rules, the French awards must be calculated at the rate of exchange prevailing at the time of respective payments, but awards from the War Claims Fund must be converted at the rate of exchange prevailing at 30th June 1939.

As to the claimant's intimation that an arbitrary deduction of 5% was made by the French authorities from the amount of loss found to have been suffered, the explanation of this deduction is not clear. I do not, however, think that it can be given any proper weight in the assessment of the compensable value of the goods lost, as this Commission has followed the practice of deducting a considerably larger percentage by way of depreciation in all cases where losses of consumer goods are involved.

On an overall review of the case, I am of opinion that the intention of the learned Deputy Commissioner was to award the claimant \$1,220.00 in addition to amounts received or to be received from France, which might be taken to cancel out the \$3,000.00 item. I am also of the opinion that the carrying out of this intention would provide a fair and equitable compensation for the claimant in the established circumstances, and that such intention might be most simply effected by providing that the French award should be deductible from the \$3,000.00 item only.

With that clarification, I approve the report of the Deputy Commissioner.

I therefore recommend that (in addition to any compensation received or to be received from the Government of France, which should be regarded as compensation otherwise provided for in respect to the \$3,000.00 item of the Deputy Commissioner's award) the claimant be paid \$1,220.00 as an award for loss of property in Paris, such payment to be in order of Priority No. 3(b) and to bear simple interest from 1st January 1946 at 3% per annum.

Dated this 8th day of December, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10029

Re: Foxall

Deputy Commissioner Francis has submitted to me his findings and recommendation, with his reasons therefor.

A copy of the Deputy Commissioner's report was forwarded to Miss Violet F. Foxall, sister of the deceased serviceman Private Reginald Foxall. On review, she has submitted an argument to the effect that, although her father was not dependent to any extent on his son Reginald during the latter's lifetime, it is unreasonable to assume that Reginald would not have been a great help to his parents if he had survived World War II. She stresses the fact that her father retired on a pension about 1933, and that his pension was more than halved in purchasing power owing to rising costs. She states that in these circumstances her father had to fall back on his small capital, which was further depleted by the long illnesses of both parents.

Miss Foxall adds that these circumstances had a serious effect on her position, as she was the sole beneficiary of her father's estate. That, however, is not sufficient to constitute her father a "dependent" on her deceased brother Reginald in the sense contemplated by the War Claims Rules. I agree with the finding of the learned Deputy Commissioner that dependency, as required by the Rules, has not been established. It seems more likely to me that in the circumstances if Reginald had not died he would have married and acquired financial obligations of his own.

Having reviewed the Deputy Commissioner's report, I approve his findings and recommendation without variation.

I therefore recommend that this claim be disallowed.

Dated this 9th day of October, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10032

Re: Perkins

Deputy Commissioner Francis has submitted to me two reports, setting forth his findings and recommendation with his reasons therefor.

The claimant has been furnished with a copy of the Deputy Commissioner's reports. I have also notified her, pursuant to the provisions of Rule of Procedure No. 20, that the Commission would require additional evidence respecting the ownership, value, and extent of loss of her property in Vienna; also that I considered it necessary to make a substantial reduction in the Deputy Commissioner's estimate of any established loss.

On review, the claimant has furnished the Commission with a considerable amount of additional information and documents, which greatly assisted in the determination of questions involved in her claim. She has given an explanation of certain discrepancies that appear in the insurance situation, to which I will refer later.

The materials on which the Commission is asked to estimate a compensable value for the loss of the claimant's house in Vienna, which was apparently completely destroyed by operations of war, are somewhat confusing. The house was built in 1898, and devolved upon the claimant by the will of her late former husband Franz Johann Meerkatz. At the time of the probate of his will in 1920, the property appears to have been valued for taxation purposes at K270,000, which would be the equivalent at that time of \$281.26.

In the early years of the war, up to 31 July 1942, the dwelling house is said to have been covered by an insurance policy of 200,000 Schillings, or the equivalent of RM 133,333, which in 1939 would be converted into Canadian currency amounting to \$53,600. On 31 July 1942, the claimant's agent in Austria took out a replacement policy in the sum of RM 190,000. On the basis of a comparison of commodity values, this amount in 1942 would be the equivalent of \$72,769.92 (Canadian) as at 30 June 1939.

The claimant explains the discrepancy between the amounts of the two insurance policies by stating that the former policy was intended to cover only a potential partial damage, as the complete destruction of so solid a building was never contemplated. The 1942 policy was apparently taken out by her agent with a view to protection against war damage, although nothing was ever recovered on the policy, owing to the inadequacy of funds in the hands of either the insurance company or the government.

It must be remembered that the War Claims Rules require the compensable value of a loss be assessed on the basis of the reasonable market value of the property at 30 June 1939. It appears to me from the evidence that the face values of the insurance policies, and particularly of the one taken out in 1942, were based on estimated replacement costs, rather than on market values. It also appears probable, from a computation of the relatively small rentals derived from the building, that the structure was of a character which did not lend itself to ready sale for a satisfactory market price, and did not lend itself to rental on a remunerative scale. As the claimant had not used the property since she left Austria in 1926, it would seem reasonable that she would either sell the property or at least have rented it for the highest possible rental. From all the circumstances of the case, I find it necessary to conclude that the reasonable market value of the building at 30 June 1939 must have been substantially lower than that fixed by the learned Deputy Commissioner on the basis of the face of the last insurance policy. Acting as a jury, I would fix such reasonable market value at the relevant time at \$40,000.

As to the loss of furnishings, I agree in the main with the conclusion of the learned Deputy Commissioner. The claimant, however, suggests that at least a token award should be made on this branch of the claim. I am impressed by the merit of this suggestion. In spite of the long time elapsed, the paucity of evidence as to the identity and volume of remaining furnishings, and the lack of opportunity of inspection by her own agents, the inference seems clear to me that some reasonably valuable furnishings of the claimant were lost by operations of war. In the absence of any evidence which would facilitate an arithmetical computation, I would recommend a token award of \$2,000. on this branch of the claim.

As to expenses, since the ownership of only one property is involved I am of the opinion that \$200.00 would reasonably reimburse the claimant for expenses necessarily incurred abroad in the preparation of her claim.

With the foregoing variations, I approve the reports of the Deputy Commissioner.

I accordingly recommend that the claimant be paid:

(a) \$42,000.00 as an award for loss of property in Austria, such payment to be in orders of Priority Nos. 3(a) to 6(a) inclusive, and to bear simple interest from 1st January 1946 at 3% per annum;

(b) \$200.00 as an award for expenses necessarily incurred for services performed abroad for the purpose of enabling the claimant to establish her claim, such payment to be without interest, and not to be taken into account for priority purposes.

Dated this 17th day of July, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

NOTE: In referring to the assessment of immovable property value, I omitted to mention the possible bearing of certain mortgages and liens affecting the property. As the sale price of the land alone was apparently more than sufficient to discharge the balance due on those encumbrances, they need not be taken into account in assessing the compensable loss.

CASE No. 10033

Re: Birks-Crawford Limited

This is substantially a claim for interest on the amount of the loss of cargoes of canned tuna fish and unshelled peanuts, sustained at Kobe in Japan.

The claimant has apparently received compensation from the Government of Japan under the terms of the Peace Treaty between Canada and that country, based upon the replacement value in Japan of the articles lost at the time the claim was settled. As the Japanese Peace Treaty does not make any provision for payment of interest, the claimant now submits a claim for payment of interest from the Canadian War Claims Fund.

Apart from the lateness of notice of such a claim, it would be met by the following difficulty. Compensation under the War Claims Rules is limited to the reasonable market value of the goods lost as at 30th June 1941, subject to deduction for depreciation (if any) from that date until the time of actual loss.

The experience of the Commission has almost invariably been to the effect that the reasonable 1941 market value adopted by the War Claims Rules as the sole basis of compensation, plus 3% interest from 1st January 1946, amounts to a substantially smaller sum than the present replacement cost on which awards under the Treaty of Peace with Japan are based. Such being the case, there is practically never a balance of compensation due under the War Claims Rules where compensation is also available under the Japanese Treaty. The solitary exception which I have noted arose in the case of a commodity whose market price was considerably reduced between the time of the loss and the time of payment of the compensation under the Treaty.

From the foregoing observations, it appears to me quite unlikely that there would be any balance of compensation available to the claimant from the War Claims Fund even if the claimant's failure to give notice to the Commission within the prescribed time could be obviated. The formula for compensation under the War Claims Rules would be June 1941 market value, minus depreciation (if any) to date of loss, plus 3% interest from 1st January 1946 to date of Japanese payment, minus Canadian equivalent of Japanese payment. In all probability, the result of the application of this formula would be a minus quantity.

This point of view was brought to the attention of the solicitors for the claimant in my letter dated 28th January 1958. As the claimant has not made any further submission, I take this silence to amount to acquiescence in the point of view expressed.

I therefore recommend that this claim be disallowed.

Dated this 15th day of September, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10038

Re: Fiset

Pursuant to the provisions of Rule of Procedure No. 46, the claimant has waived his right to a hearing of his claim by a Deputy Commissioner, and has consented that the Chief War Claims Commissioner may proceed to hear and dispose of his claim in the first instance.

The claimant was born at Rimouski in the Province of Quebec in 1910. He was a Canadian national throughout the period of World War II, and has been a Canadian citizen ever since January 1947. He is, therefore, fully eligible to present a claim against the Canadian War Claims Fund.

According to the claimant's evidence, he was a student in Paris at the time of the German occupation. He was arrested by the Gestapo and interned in Fresnes prison from July to October 1940, a period of something over two months. From October 1940 to 24th August, 1944, he was interned in the "Caserne de St-Denis".

Although there is no evidence of brutality or any positive maltreatment, the testimony of the claimant, as well as the materials presented to the Commission in numerous similar cases, indicate that the very inadequate rations and highly unsanitary conditions prevailing at St.-Denis constituted some measure of maltreatment. Those interned at Fresnes are considered to have been in the direct custody of the Gestapo.

The claimant appears to have been very thin and enervated on his discharge, and the quantity and efficiency of his work was considerably reduced during the eight or nine months following his liberation.

I therefore find that the claimant is entitled to per diem maltreatment award for the period of his detention at Fresnes, and to a lump sum award for the period of his internment at St.-Denis.

In the absence of exact evidence as to the date of transfer from Fresnes to St.-Denis, I would fix the period of internment in Fresnes at 40 days.

Before the recent addition of Subsections (e) and (f) to section (2) of the Schedule to the War Claims Regulations, the applicable per diem award would have been "one dollar". Since the enactment of those Subsections, the appropriate award would be "one dollar and fifty cents", and I therefore recommend that the claimant receive \$60 as an award for maltreatment during internment at Fresnes.

Before the amendments to which I have referred, I should have been inclined to recommend a lump sum award of \$300 for maltreatment at St.-Denis.

By analogy with the increased scale of awards provided the said Subsections (e) and (f), I will now recommend an award respecting maltreatment at St.-Denis, in the sum of \$450.

When the claimant was arrested and interned, he left his personal belongings for storage with a firm named "L'Avenir". On his liberation, he made a search for his goods, and recovered a few of them but was informed that the remainder had been looted during the war. That information confirms the presumption of loss which is raised by the War Claims Rules.

The claimant values the missing articles at \$400, which, he states, is considerably less than the cost price and much less than the value to himself. He refers to one "fine edition" which, he says, would sell for \$50 or \$75.

In all circumstances, I would fix the compensable market value of the lost goods at \$300, and I consider that the claimant is entitled to compensation in that amount.

As the claimant has also waived the right to the review of my decision, I may now proceed to dispose of the case and I accordingly recommend that the claimant be paid:

(a) \$510 as an award for maltreatment of himself whilst a civilian internee in Europe, such payment to be in order of Priority No. (1-2);

(b) \$300 as an award for loss of property in France, such payment to be in order of Priority No. 3(a) and to bear simple interest from 1st January, 1946, at 3% per annum.

This is a case in which payment in respect of the property claim may be or could have been made from a source other than the War Claims Fund, and therefore the claimant would receive, or would be deemed to have received, at least a partial "compensation otherwise provided for". I am, however, of opinion that undue delay would result from postponement of my recommendation until I might be in a position to assess with reasonable certainty the possibilities of recovery of compensation from such other source. I therefore proceed to make my recommendation on the basis of the information now available, leaving it to the Treasury Board (pursuant to War Claims Regulation 4(4)) to determine the portion, if any, of the recommended payment which should be paid from the War Claims Fund and the time at which such portion may be paid.

I also understand that the claimant is indebted to the Department of Citizenship and Immigration for a balance due on advances made to him for subsistence and maintenance during World War II.

Date this 7th day of November, A.D. 1958.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10041

Re: Pytowski

... As the late Mr. Pytowski originated the presentation of the claims before his death, which occurred on 18th January 1953, it is not necessary to record a finding as to the national status of the beneficiaries of his will. . .

Dated this 13th day of March, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

CASE No. 10161

Re: *Denbigh*

...The principal difficulty in the adjudication of this case has been the question of the claimant's Canadian status at the time of his internment and property loss. He was born in Japan on 18th February 1911, and landed in Canada for permanent residence in December 1927. His name was included in his father's naturalization certificate issued at Ottawa on 22nd February 1928. After prolonged deliberation, the Department of Citizenship and Immigration has ruled that he did not have Canadian domicile during World War II.

Apparently, however, no formal steps were taken to revoke his naturalization, and he acquired the status of a Canadian citizen on 1st January 1947 by virtue of Section 9(1)(a) of the *Canadian Citizenship Act*.

There is an apparent anomaly in the War Claims Rules, in that they place a naturalized British subject in a more favourable position than a person who was born a British subject outside of Canada. A British subject who became a Canadian by acquiring Canadian domicile ceases to be a Canadian on losing that domicile, whereas an alien-born person who acquired Canadian status through naturalization did not lose his Canadian status under the Rules merely by loss of Canadian domicile unless he became an alien by revocation of his naturalization or otherwise.

The words of qualification (iii) on page 24 of the Report of the Advisory Commissioner on War Claims are, however, very clear. The claimant's name was included in a certificate of naturalization granted in Canada and he had not become an alien at the relevant time, though he had obviously lost his Canadian domicile both by statute and by common law. I have therefore been reluctantly obliged to rule that the claimant was a Canadian within the meaning of the War Claims Rules at the time of his internment and property loss, as well as throughout the presentation of his claim....

Dated this 11th day of September, A.D. 1959.

(Sgd) THANE A. CAMPBELL
Chief War Claims Commissioner

ALPHABETICAL LIST OF CASES

	PAGE		PAGE
Acheson 9499.....	560	Butt 9331.....	520
Acker 9860.....	655	Byrne 9292.....	501
Aluminium Limited 9348.....	524		
Anderson 2773.....	307	Cairns 8764.....	434
Anderson 2794.....	307	Calvin 1609.....	251
Anderson 8570.....	431	Campbell 5317.....	357
Anderson 9327.....	515	Canadian National Railways Company and	
Andrew 5329.....	360	Canadian National (West Indies) Steam-	
Andrews 10011.....	706	ships Limited 9227.....	483
Angeloff 9888.....	666	Canadian Pacific Railway Company 9879	
Arcand 9309.....	505	and 9901.....	664
Arcand 9945.....	693	Clarelli 9689 (17 IT).....	594
Assomption de la Sainte-Vierge, Les Soeurs		Carlyle 9488.....	557
de l' 6423.....	386	Carpentier 9191.....	478
Aszkanazy 9798.....	63	Carragher 6845.....	405
		Chan 3168.....	316
Baier 9274.....	496	Chandler 1435.....	236
Bain, Donald H. Limited 9036.....	457	Chanler 7152.....	407
Balcer 9842.....	652	Chapman 9438.....	555
Balfour Guthrie (Canada) Limited 9101.....	462	Charbonneau 2375.....	283
Baribeau 6656.....	396	Clark 2240.....	272
Barnes 2368.....	278	Clercs de Saint Viateur, Les 3106.....	315
Barrière 1421.....	233	Cleveland 1993.....	264
Barrington 9368.....	533	Clifton 2410.....	287
Barton 1469.....	237	Clough 4124.....	329
Barwick 9707.....	597	Coffin 9557.....	573
Barzeele 9056.....	462	Communauté des Missionnaires de Marie, La	
Bata 9939.....	683	6805.....	402
Bédard 1433.....	236	Communauté des R.R. SS. Franciscaines	
Beer 9780.....	634	Missionnaires de Marie, La 6766.....	398
Bégin 6037.....	376	Congrégation de Saint-Dominique du Tiers,	
Bellerose 9198.....	480	La 3061.....	313
Bennett 2611.....	301	Congrégation du très St-Rédempteur, La	
Benoist 1834.....	257	9878.....	663
Bevilacqua 9713 (39 IT).....	598	Conner 9215.....	482
Birch 1895.....	260	Cools 2646.....	305
Birks-Crawford Limited 5330.....	363	Copeman 1625.....	352
Birks-Crawford Limited 10033.....	720	Copes 8675.....	431
Bissonnette 9537.....	569	Corbo 9919 (19 IT).....	675
Black 9261.....	494	Coté 7760.....	420
Blair 5314-15.....	356	Cottenoir 5068.....	348
Boesem 9943.....	692	Crow 4013.....	328
Bonin 7756.....	415	Crowe 8406.....	428
Boome 9726.....	605	Crowley 2017.....	265
Borkenhagen 9349B.....	528	Cullen 1479.....	242
Borrelli 9729 (27 IT).....	608		
Borthwick 2084.....	268	Danson 9372.....	534
Bothwell 2461.....	293	Day 2644.....	305
Bowden 5798.....	372	Del Duca 9917 (56 IT).....	673
Boytinck 9827.....	645	Denbigh 2641.....	302
Brault 9880.....	665	Denbigh 10161.....	723
Brealey 9905.....	672	D'Errico 10021 (69 IT).....	713
Brisson 3393.....	324	De Vries 5697.....	370
Britton 9789.....	636	DiMurro 8778.....	435
Broadus 9977.....	703	Dizazzo 9978 (66 IT).....	704
Broomhall 9784.....	635	Dockrill 6566.....	392
Brooks 2609.....	298	Dockrill 6567.....	393
Brown 8762.....	432	Dodd 8862.....	456
Burdock 5300.....	350	Domina 8814.....	449
Burno 9672.....	591	Dominicaines (L'Oeuvre des Missions) 9540..	570

	PAGE		PAGE
Dominicains ou Frères Prêcheurs au Canada, L'Ordre des 10022.....	715	Jamieson 2110.....	269
Douglas 9987.....	705	Jarry 9342.....	521
Doyon 9530.....	567	Johnson 9526.....	565
Drapeau 1929.....	261	Jones 9941.....	691
Duckworth 9167.....	466	Kahn 9869.....	658
Dumaine 9969.....	703	Kaufman 4701.....	346
Duncan 6022.....	373	Kempler 9169 (12 IT).....	466
Eaton, T. Company Limited 9128.....	463	Kennedy 9793.....	637
Edmonds 2215.....	270	King 3053.....	312
Edmonds 9277.....	497	King 9429.....	550
Ellenson 10028.....	716	Labelle 9465.....	555
Elliott 4488.....	338	LaFleche 9853.....	653
Elliott 4527.....	343	Lambert (Société des Missions Étrangères) 7789.....	422
Emms 4266.....	329	Lancaster 8783.....	437
Evans 9830.....	648	Lancaster 8784.....	441
Federer 9407.....	542	Landauer 9927 (67 IT).....	679
Ferguson 2563.....	297	Langley 1414.....	229
Fiset 10038.....	721	Large 1845.....	258
Fisher 9660.....	591	Lasenba 2213.....	270
Fitzgerald 9278.....	498	Laws 9359.....	532
Flower 1685.....	252	Lebel 9541.....	571
Forster 1431.....	234	Leblanc 1751.....	254
Fournier 9528.....	566	Leblanc 9180.....	476
Foxall 10029.....	718	Lee 2386.....	284
Franciscains, Les Syndics Apostoliques des Frères Mineurs ou 9303.....	502	Lee 9871.....	659
Franciscaines Missionnaires de Marie, La Communauté des RR. SS. 6766.....	398	Lever Brothers Limited 8462.....	428
Franciscaines Missionnaires de Marie, Les 9881	666	Lindsay 9131.....	465
Frères Prêcheurs au Canada, L'Ordre des Dominicains ou 10022.....	715	Lourie 9890.....	667
Frost 9875.....	661	Lourie 9891.....	670
Gagnon 2908.....	310	Low-Beer 1472.....	239
Gibb 2335.....	276	Lowe, Lamack Ltd. 9785.....	636
Gibbons 2286.....	274	Lukacs 9899.....	672
Gilbert 9425.....	549	Lush 9484.....	557
Gillis 2409.....	286	MacDonald 9876.....	662
Glover 3903.....	328	MacKinnon 9384.....	535
Goss 4497.....	342	MacLeod 9758.....	623
Goupil 8543.....	430	MacMillan 2390.....	285
Green 4749.....	347	Mahler 9623.....	586
Griffin 9755.....	622	Mahon 3251.....	322
Griffith 6253.....	382	Markham 7157.....	408
Grimston 9517.....	564	Marle 9903 (26 IT).....	672
Gruber 9288.....	499	Marshall 9825.....	643
Hackett 9504.....	563	Martin 9430.....	550
Hainault 2462.....	296	Martineau 9533.....	568
Hall 9803.....	641	Massé (Société des Missions Étrangères) 7797	424
Hammell 5545.....	369	Massei 9295 (11 IT).....	501
Harrison 6814.....	405	Massie 8482.....	429
Heller 9315.....	506	Matthews 6259.....	385
Heller 9870.....	659	Mavec 9251.....	490
Henderson 2340.....	290	Mayer 9330A.....	518
Henderson 6357.....	386	Mayrand 1471.....	237
Henning 9938.....	682	McAllister 8791.....	445
Héту 7781.....	422	McKay 9107.....	462
Horn 9498.....	560	McKenney 2463.....	296
Hosking 5225.....	349	McKillop 4431.....	332
Iacovone 9921 (58 IT).....	676	McKinley 9589.....	576
Imperial Oil Limited 8852.....	449	McKinnon 5324.....	357
International Bronze Powders Limited 9951	696	McNichol 6961.....	406
		McRae 6470.....	392
		Mephram 6255.....	383
		Middlecoat 8787.....	444
		Milne 4434.....	332
		Mines 2452.....	292
		Mirotan Investment Company Limited 9725	600

	PAGE		PAGE
Missionnaires de Marie, La Communauté 6805	402	Richard 9232.....	488
Missions Dominicaines, L'Oeuvre des 9540...	590	Richards 2991.....	311
Missions-Étrangères, La Société 7744.....	412	Roach 1985.....	263
Missions-Étrangères, La Société des (Lambert)		Rogers 1501.....	250
7789.....	422	Roggenburg 9854.....	653
Missions-Étrangères, La Société des (Massé)		Rosati 9765 (46 IT).....	625
7797.....	424	Roth 9328.....	516
Mitchell 6256.....	383	Rudyk 4672.....	343
Moore 6748.....	397	Russell 9402.....	541
Moore 9431.....	554	Russell 9515.....	564
Moreau 9196.....	479		
Morris 5799.....	372	Saalheimer 9720 (20 IT).....	599
Morris 9606.....	580	Sachs 9394.....	537
Muir 8790.....	445	Saint Dominique du Tiers, La Congrégation	
Mulvany 1936.....	262	de 3061.....	313
Mustard 9509.....	563	Saint Viateur, Les Clercs de 3106.....	315
Mutter 9492.....	558	Sainte Anne, Les Soeurs de 3537.....	325
		Sainthill 1482.....	244
Nadeau 9620.....	585	Samuel 9612.....	581
National Revenue, Department of 9776.....	633	Sandell 9625.....	586
Newfoundland, The Government of 9410....	544	Sanguinetti 1483.....	245
Nielsen 9840.....	651	Sarrazin 7810.....	426
Noble 4437.....	334	Scappatura 9799.....	639
Notre-Dame-des-Anges, Les Soeurs Mission-		Scherer 9771.....	631
naires 9576.....	573	Schiller 9183.....	477
		Shaw 1513.....	250
O'Brien 5332.....	366	Shaw 9600.....	577
Oeuvre des Missions Dominicaines, L' 9540	570	Shaw 9829.....	647
Ukraine 7118.....	406	Sime 9345.....	511
Olsen 3089.....	315	Simko 9205.....	482
Ontario Glove Manufacturing Co. Ltd. 9796	637	Simms, T.S. & Co. Limited 9964.....	701
Oppen 1762.....	256	Sister Isabelle-du-Rosaire 9247.....	489
Ordre des Dominicains ou Frères Prêcheurs au		Sister Marie-Agn s 10008.....	705
Canada, L' 10022.....	715	Sister Marie-Bernard 6607.....	393
Orford 9358.....	528	Sister Marie de Jésus Eucharistie 4389.....	330
Overholt 1415.....	231	Sister Marie de St-Fale 6807.....	403
		Sister Marie de St-Fridulphe 6769.....	399
Paquin 4441.....	336	Sister Marie de St-Ymer 6793.....	400
Paraskevas 9935.....	681	Sister St-Louis de France 9650.....	589
Paterson, N.M. & Sons Limited 9857.....	654	Sister St-Roch 9579.....	574
Paul 9753.....	622	Sister St-Tharcieus 9584.....	576
Pearson 2065.....	267	Sister Ste-Julienne 9580.....	575
Perkins 10032.....	718	Société des Missions-Étrangères 7744.....	412
Pfeffer 8794.....	446	Société des Missions-Étrangères (Lambert)	
Pfeffer 9619.....	583	7789.....	422
Picher 9546.....	572	Société des Missions-Étrangères (Massé) 7797	424
Pike 9046.....	461	Soeurs de l'Assomption de la Sainte Vierge,	
Piller 9254.....	490	Les 6423.....	386
Placek 4493.....	339	Soeurs Franciscaines Missionnaires de Marie,	
Poole 1916.....	261	La Communauté des 6766.....	398
Porchon 4439.....	335	Soeurs Missionnaires de Notre-Dame-des	
Poskitt 2643.....	304	Anges, Les 9576.....	573
Primeau 4699.....	344	Soeurs de Sainte-Anne, Les 3537.....	325
Proulx 1456.....	236	St-Florian 6425.....	389
Provost 9203.....	481	St-Pierre 2901.....	309
Purity Flour Mills Limited 9037.....	458	Stark 9226.....	483
Pytowski 10041.....	722	Stephens 8768.....	435
		Stevens 9739.....	609
Quenneville 7806.....	426	Stevenson 2892.....	308
		Stockwell 6029.....	373
Rabinovitch 5325.....	359	Stoddart 9834.....	651
Ratcliff 9714.....	599	Strachan 8976.....	457
Redgers 7158.....	410	Strickland 9279.....	499
Redgers 7159.....	410	Sugden 3757.....	327
Redgers 7160.....	410	Sunset Manufacturing Co. 5333.....	367
Redlich 9318.....	510	Sweeney 1422.....	234
Redlich 9319.....	511	Syndics Apostoliques des Frères Mineurs ou	
Renaud 6078.....	377	Franciscains, Les 9303.....	502

	PAGE		PAGE
Tagliamonti 9694.....	596	Walters 9556.....	572 and 573
Taylor 9711.....	598	Warren 9177.....	469
Teoli 9918 (57 IT).....	673	Watson 3066.....	314
Trainor 9041.....	459	Watts 6030.....	375
Tremblay 2444.....	290	Weatherhead 9206.....	482
Très St-Rédempteur, La Congrégation du 9878.....	663	Webster 3034.....	311
Truss 8796.....	447	West 8456.....	428
Turner 2642.....	302	West 9770.....	627
Turriziani 9677 (5 IT).....	592	West 9868.....	657
		White 4496.....	341
		White 4948.....	348
United Church of Canada, The 4495.....	340	Whitehead 1486.....	246
Usher 9523.....	565	Widdup 9744.....	619
		Woelfle 10017.....	709
Vacca 9764 (45 IT).....	623	Woo 9495.....	558
Vermette 2367.....	277	Woodcock 3282.....	323
Vidal 8666.....	431	Woodcot Estates Limited 9740.....	610
Voros 9873.....	660		
		Young 9859.....	654
Walker 8746.....	432		
Walker 9396.....	539	Zeissler 9693.....	596
Wallace 9605.....	579	Zimmer 4486.....	338
Walsh 9898.....	670	Zimmer 9925.....	677

